

EXHIBIT 2

In the Matter Of:

Fusion Elite All Stars vs

Varsity Brands

JONATHAN ORSZAG

November 15, 2022



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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

FUSION ELITE ALL STARS, et al.,)
)
Plaintiffs,)
) CASE NO.
vs.) 2:20-cv-02600-SHL-TMP
)
VARSITY BRANDS, L.L.C., et al.,) VOLUME 2
)
Defendants.) PAGES 200 - 489
)
_____)
)
JONES, et al.,)
)
Plaintiffs,) CASE NO.
) 2:20-cv-02892-SHL-TMP
vs.)
)
BAIN CAPITAL PRIVATE EQUITY, et)
al.,)
)
Defendants.)
_____)

DEPOSITION OF JONATHAN M. ORSZAG
Tuesday, November 15, 2022
LOS ANGELES, CALIFORNIA

STENOGRAPHICALLY REPORTED BY:
LINDSAY A. STOKER, RPR, CRC

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Deposition of Jonathan M. Orszag, taken at the Law
Offices of Locke Lord, 300 S. Grand Avenue, Suite 2600,
Los Angeles, CA 90071, commencing at 9:14 a.m., on
Tuesday, November 16, 2022, before Lindsay Stoker, RPR,
CRC, Certified Shorthand Reporter No. 14373 in and for
the State of California.

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1 Q. And did you speak with any of these
2 individuals?

3 A. Yes, I did.

4 Q. With Mr. Peterson?

5 A. That is correct.

6 Q. Anybody else?

7 A. No, I did not. I reviewed deposition
8 testimony of -- of some of these people but not
9 the -- not -- I did not talk to them directly.

10 Q. Will you flip back a couple pages? There's
11 a slide entitled "USASF Boards and Committees."
12 Yeah, you've got it in front of you.

13 Did your review any of the rules of any of these
14 committees?

15 A. I have. Yes, sir.

16 Q. And for which ones?

17 A. Certainly, the sanctioning committee. I
18 believe I cite to the -- some of those documents.

19 Q. Right.

20 Did you -- did you review the rules of any of
21 the other committees?

22 A. I cite to various rules. I actually have a
23 footnote that describes how they promulgate rules
24 every so often, and I just don't know if those are
25 the rules of the committee. Like, I -- I didn't

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1 commit to memory what -- whether they're rules of
2 the committee or rules of the USASF as a whole.

3 But I have reviewed and cite to various
4 documents with regard to the sanctioning committee
5 for sure and possibly with regard to the other ones
6 as well.

7 Q. Okay. You can put that aside.

8 A. Is it a good time for a short break?

9 MR. SAVERI: Whenever you want.

10 THE WITNESS: Let's -- let's take a 10-minute
11 break.

12 MR. SAVERI: Let's go off -- let's go off the
13 record.

14 THE VIDEOGRAPHER: Going off the record.

15 (Recess.)

16 THE VIDEOGRAPHER: Going back on the record.

17 The time is 11:58 a.m.

18 BY MR. SAVERI:

19 Q. Mr. Orszag, in -- in connection with your
20 report, did you review any of the financial
21 materials of USASF? Financial statements, P&Ls,
22 budget, anything like that?

23 A. My recollection is some of those documents
24 were attached to or part of various documents that I
25 looked at.

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1 Q. Okay. Do you know where the initial
2 funding for USASF came from?

3 A. In part, some of it came from Varsity. And
4 then obviously there were early funders who paid
5 revenue into the organization, and so they would
6 help fund it as well.

7 Q. Okay. Do you know how much of the original
8 funding for USASF came directly from Varsity?

9 A. I don't know how one can reliably do that
10 analysis because there is -- if you are getting
11 revenue from membership, say, at the same time that
12 you may get a -- a loan from a party, in thinking
13 about the first year, they are both relevant for
14 helping the organization to get off the ground.

15 Q. Okay. And, as you think about that period
16 where Varsity -- where USASF was getting off the
17 ground, do you recall -- well, let me ask you this:

18 Do you recall, like, in nominal terms, how much
19 the original loan was?

20 A. I -- I believe in nominal terms the
21 original loan was \$1.8 million.

22 Q. And do you recall, at least as of that
23 time, how much of USASF's annual budget that
24 represents?

25 MS. RICCIO: Objection.

1 THE WITNESS: Sit -- sitting here today, I do
2 not recall that question -- the -- the total revenue
3 of USASF in, say, 2005.

4 BY MR. SAVERI:

5 Q. Okay. And thinking about that time when it
6 was getting off the ground, do you recall how much
7 of USASF's budget came from outside sources? From
8 membership or -- or other?

9 A. I'm going to give you the same answer.
10 Sitting here today, I do not recall the -- the
11 financials from 2000 -- 2004 or '5 time frame.

12 MS. RICCIO: Objection.

13 BY MR. SAVERI:

14 Q. Do you recall at least that the original
15 funding that Varsity provided was significant and
16 important to the formation and -- and -- and
17 initiation of USASF?

18 MS. RICCIO: Objection.

19 MR. KAISER: Objection.

20 THE WITNESS: I -- I think I use language to
21 that effect that Varsity helped to create this
22 sanctioning organization that benefited the entire
23 industry and other event producers as well.

24 BY MR. SAVERI:

25 Q. Well, when you say when it "helped," that

1 included substantial financial support; correct?

2 A. Its help came in -- of -- several forms,
3 one of which was financial assistance.

4 Q. Was there any other organization that
5 provided more funding or financial support to USASF
6 when it got -- when it first got going as far as you
7 know?

8 A. No.

9 Q. Are you aware that Varsity provided office
10 space to USASF?

11 A. Yes. I write about that in my expert
12 report.

13 Q. It was in the same building as Varsity?

14 A. Yes. But let's be clear, it provided
15 office, and USASF paid for that office space.

16 Q. Do you -- are you aware that the same
17 lawyers represented both the USASF and Varsity at
18 the beginning?

19 MR. KAISER: Objection.

20 MS. RICCIO: Objection.

21 THE WITNESS: The precise, you know, nature of
22 that is not something that is fresh in my mind,
23 sitting here today.

24 BY MR. SAVERI:

25 Q. Do you know what Varsity paid back --

1 excuse me. Do you know when USA -- USASF paid back
2 the loan to Varsity?

3 A. I have not --

4 MR. KAISER: Objection.

5 THE WITNESS: -- I have not committed the
6 precise year to memory, but it was at some point
7 after they received the loan.

8 BY MR. SAVERI:

9 Q. Is it fair to say it was a number of years
10 after USASF was formed?

11 MR. KAISER: Objection.

12 THE WITNESS: Sitting here today, anything more
13 than two years, I think, would be counted as the
14 number of years, and so the answer would be yes.

15 BY MR. SAVERI:

16 Q. Okay. Are you aware that -- that the USASF
17 paid off the loan and -- and moved out of Varsity's
18 offices in order to address concerns that USASF was
19 part of Varsity?

20 MS. RICCIO: Objection.

21 MR. KAISER: Objection.

22 THE WITNESS: Sitting here today, you would have
23 to point me to that. I know that they moved out in
24 roughly 2014, '15 kind of time frame. It may have
25 been '13; it may have been '16. But I -- the

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1 precise date is in my report. I can look it up.

2 BY MR. SAVERI:

3 Q. Okay. Are you aware that USASF paid off
4 the loan and moved out of Varsity's office in order
5 to address concerns that -- that USASF was
6 controlled by Varsity?

7 MS. RICCIO: Objection.

8 MR. KAISER: Objection.

9 THE WITNESS: The record will speak for itself
10 on that. I -- my analysis was regards to the claims
11 put forward by the experts that you have retained in
12 this case and the economic analysis relevant to
13 that.

14 BY MR. SAVERI:

15 Q. Okay. In connection with your report, did
16 you -- did you look at or review any of the -- of
17 the criticism that was raised in the cheerleading
18 community regarding the view that USASF was
19 controlled by Varsity?

20 MR. KAISER: Objection.

21 THE WITNESS: I'm going to give you the same
22 answer. I've reviewed various deposition testimony
23 as well as other documents, as well as the reports
24 of the experts that you have retained in this
25 matter.

1 And they make -- they make those claims in -- in
2 their expert reports, for example. So thus I'm
3 aware of them.

4 BY MR. SAVERI:

5 Q. Could you turn to your report?

6 A. Yes, sir.

7 Q. I'm going to ask you some questions about
8 your assignment in the case. Can you turn to
9 paragraph 11, sir?

10 A. Yes, sir.

11 Q. And in -- in paragraph 11, you say, "I have
12 been asked by counsel for USASF to review and
13 assess, from an economic perspective, whether the
14 available evidence is consistent with Plaintiffs'
15 allegations that USASF conspired with Varsity to
16 foreclose competition and raise prices in cheer
17 competitions, apparel, and camps.

18 Specific- -- specifically, I have been asked to
19 offer an independent economic assessment of, one,
20 the opinions and analysis of Dr. Netz's report as
21 they relate to the role of USASF as a sanctioning
22 organization for All Star Cheer and to alleged
23 conspiracy with Varsity; two, additional claims made
24 by Drs. Heeb, Maki, and Mr. Aronoff, related to
25 USASF's role in the alleged conspiracy."

1 Was that your assignment?

2 A. Yes, sir.

3 Q. Okay. And, generally, how did you approach
4 that task?

5 A. I have already answered that question. I
6 think, based on the previous question that you
7 asked, is I considered the opinions and the evidence
8 that they put forward and I looked at the economic
9 evidence relevant to these questions and -- and
10 whether they were consistent with or not the claims
11 put forward.

12 And I found that the economic evidence is
13 inconsistent with the claims put forward by the
14 experts that you've retained as I've described in
15 this report.

16 Q. Did you conduct any surveys?

17 A. No, I did not.

18 Q. And did you conduct any financial modeling?

19 A. No, I did not.

20 Q. And did you conduct any econometric or
21 statistical modeling?

22 A. No, I did not.

23 Q. And did you model supply and demand?

24 A. No, I did not.

25 Q. Okay. And did you model pricing or prices?

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1 A. No. And this is part of my critique -- is
2 that they have not considered -- when it comes to
3 the issues with regard to USASF, a whole host of
4 issues -- and I describe how the experts you've
5 retained have failed to address critical issues as
6 part of their analyses.

7 Q. Okay. And just so I'm clear, did you
8 conduct or perform any modeling of pricing or
9 prices?

10 A. My first word was, no, I have not.

11 Q. Okay. Thank you. And did you conduct any
12 modeling or analysis of market shares?

13 A. In order to reliably measure market share,
14 I believe one needs to reliably measure or define
15 the relevant market, and I have not conducted a
16 relevant market analysis in this case.

17 Q. Okay. And generally the -- the materials
18 that you relied on were documents that were produced
19 in the case by the parties; is that correct?

20 A. That's one element, yes.

21 Q. Depositions of witnesses in this case,
22 that's one element?

23 A. That is correct.

24 Q. The interviews that you conducted that
25 weren't recorded; correct?

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1 A. They were not recorded. That is correct.

2 Q. And --

3 (Reporter clarification.)

4 MR. KAISER: Yes. Argumentative.

5 BY MR. SAVERI:

6 Q. And some publicly available materials, I
7 think, that you cite in your Appendix B; correct?

8 A. Among other information, yes.

9 Q. Okay. And -- but you cite no transaction
10 data; correct?

11 A. That is correct.

12 Q. Or pricing data; is that correct?

13 A. That is correct because the plaintiffs'
14 experts that you have retained do not cite that with
15 regard to their claims with regard to the alleged
16 collusion with USASF, and I am responding to their
17 economic analysis or lack thereof.

18 Q. Is the analysis that you're putting forward
19 qualitative as the -- as an economist uses that
20 term?

21 A. It is in part qualitative and in part
22 quantitative.

23 Q. Okay. Well, let me ask you what are the
24 economic aspects of your analysis?

25 A. Thy are all described here in terms of

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1 the -- the fact that, for example, the experts
2 you've retained have failed to consider any
3 procompetitive benefits from the rules that they
4 have examined, number one.

5 And they have failed to examine any effects of
6 the alleged collusion, and they make sweeping
7 speculation about how the rules, for example, are
8 biased in favor of Varsity, and that's allowed
9 Varsity to add events.

10 And what I can show is quantitatively that
11 Varsity has not done that, according to the data,
12 over and above what it acquired as part of its
13 unilateral business interest.

14 Q. Well, do you think that ordinary people
15 with common sense could review that same evidence
16 that you reviewed and come to their -- those
17 conclusions?

18 MS. RICCIO: Objection.

19 THE WITNESS: Your experts did not review the
20 empirical evidence; so I -- I'm confused. They did
21 not do the most simple look at the data, and what
22 I'm saying is they make these sweep- -- sweeping
23 speculations; and, if they just looked at the actual
24 data in terms of the number of events produced by
25 Varsity and what's happened in terms of the

1 sanctioned events over time, that it -- there's not
2 evidence to support their speculative claims.

3 And so they failed to -- my critique is they
4 failed to consider the data that you seem to suggest
5 is so simple, in which completely rebuts and
6 suggests that their speculative qualitative analyses
7 are just wrong and they didn't do that.

8 BY MR. SAVERI:

9 Q. Well, as an economist, what do -- what do
10 you bring to bear to that analysis?

11 MR. KAISER: Objection.

12 MS. RICCIO: Objection.

13 THE WITNESS: That I conducted -- I -- where
14 they just speculate about what happened or would
15 have happened or did happened, I showed what
16 actually did happen with empirical evidence, and
17 what did happen is not consistent with the claims
18 they put forward and the theories they put forward;
19 so that tells me that their theories are wrong.

20 And it's -- their theory of alleged collusion is
21 inconsistent with the empirical facts.

22 BY MR. SAVERI:

23 Q. Well, is -- do you agree that ordinary
24 people with common sense could review the same
25 evidence that you reviewed and come to the same

1 conclusion?

2 MS. RICCIO: Objection.

3 THE WITNESS: I'm -- I'm sitting here today
4 saying to you that the experts for -- that you've
5 retained did not look at this data and did not
6 consider it and it contradicts their claims where
7 they make broad speculative assertions and I show
8 that those broad speculative assertions are
9 inconsistent with the data that they claim should
10 have -- what should have happened in the data that
11 -- if -- if what they say is correct.

12 BY MR. SAVERI:

13 Q. What -- what particular part of your
14 training, as an economist, permits you to read that
15 evidence differently than anybody else?

16 MS. RICCIO: Objection.

17 THE WITNESS: That you consider the claim that
18 you both have exits and entry, and I -- I don't know
19 how to even answer your question.

20 The -- there's empirical evidence that goes
21 directly to the question, and I'm just focusing on
22 one part of the work. There's obviously other
23 discussions in here in terms of the economics of
24 free writing, the economics of procompetitive
25 benefits, which are ignored by the experts that you

1 retained and going right to one of the points of
2 effects which they ignore.

3 (Reporter clarification.)

4 BY MR. SAVERI:

5 Q. Are you familiar with the concept called
6 the null hypothesis?

7 A. Yes.

8 Q. And what is that?

9 A. It is that you have a hypothesis that you
10 test whether it is correct or not.

11 Q. And how do scientists test a null
12 hypothesis?

13 A. You put forward a hypothesis, say, for
14 example, you say, "If I change X, it will change Y,"
15 and then you test whether that is correct. And you
16 have a control group, and you either use a
17 before-and-after-type analysis, or you use a control
18 group to test it.

19 Q. Have you done any sort of that testing in
20 this case?

21 A. In essence, what we've done is -- what I've
22 done is to look at how -- how the number of events
23 produced by Varsity has changed over time, ignoring
24 controlling for the events that they acquired as
25 part of their unilateral business interests.

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1 Q. So could you state for the record, then,
2 what is the null hypothesis, then, that you test?

3 A. You can test in either direction. I am
4 testing the question of whether there was a change
5 in the number of events produced by Varsity over and
6 above what they acquired during the class period.

7 And the answer is, no, there was not; and that's
8 then -- that then shows that the analysis conducted
9 by the experts that you retained is wrong with
10 regard to these issues.

11 Q. Is there any other null hypothesis that you
12 tested?

13 A. In terms of effects, no. There's
14 discussions that are ignored by -- in the
15 qualitative discussions put forward by the experts
16 that you retained that I also consider that they
17 failed to consider.

18 Q. And in that qualitative analysis, you
19 analyzed the discovery record in this case; is that
20 correct?

21 A. Not necessarily. Some of it is just based
22 on basic economics.

23 Q. Okay.

24 A. And I cite to economics literature or the
25 sports economics literature more specifically in

1 some circumstances with regard to those issues.

2 Q. Okay. But you also relied extensively on
3 analysis or review of the -- of the -- of the
4 discovery record in this case; correct?

5 A. I would say that discovery record helps to
6 inform certain questions that I examined. For
7 example, there are certain claims Ms. -- Dr. Netz
8 puts forward --

9 Q. Right.

10 A. -- that are factually incorrect and I show
11 how they are factually incorrect based on the record
12 evidence that she must have failed to examine.

13 Q. But, you know, is that factual issue --
14 isn't that factual issue a matter for the jury to
15 decide in this case?

16 MS. RICCIO: Objection.

17 MR. KAISER: Objection.

18 THE WITNESS: That's somebody -- that's -- I'm
19 not a lawyer; so I will defer to counsel or to a
20 judge about that question.

21 As an economist, I can analyze whether she read
22 something correctly from an economic perspective,
23 and the answer is she makes certain assertions and
24 claims that are factually incorrect.

25 And so I point those out. Ultimately, whether

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1 she is right will be -- somebody else perhaps could
2 assess that. That's a legal question. But I can,
3 as an economist, look at the words that she as an
4 economist puts forward and say, "Do I see what she
5 says in the document that she cites?"

6 BY MR. SAVERI:

7 Q. And -- and your opinion cites the instances
8 where you disagree with Dr. Netz as to the factual
9 conclusions that she draws from those documents --

10 MS. RICCIO: Objection.

11 BY MR. SAVERI:

12 Q. -- is that correct?

13 A. In -- there's -- in certain places. There
14 are certain places where -- and I -- I make a note
15 of this where I may disagree with her, but I don't
16 raise it because, if not, this could be hundreds of
17 pages. I try to focus on the bigger topics rather
18 than nitpicking on small issue.

19 Q. And then is it also fair to say that you
20 reached similar conclusions that Dr. Heeb has
21 misinterpreted some of the documents or records in
22 this case?

23 A. In certain circumstances, Dr. Heeb and
24 Dr. Netz disagree with each other about
25 interpretations; so I point out sometimes where

1 there's a conflict among the experts that you've
2 retained in terms of their own interpretations of
3 the documents that they are each pointing to.

4 Q. Okay. I understand -- my question, sir,
5 was whether you in certain situations disagree with
6 the conclusions that Dr. Heeb has -- has reached
7 about -- with respect to some of the facts or
8 discovery records in this case?

9 A. That's fair that he makes certain factual
10 assertions, and I point out where my reading of it
11 is different than his reading.

12 Q. Now, as part of your analysis, did you look
13 for examples or instances of conspiracy between
14 Varsity on one hand and USASF on the other?

15 A. Yes.

16 Q. And did you find any instances?

17 A. I found no instances consistent with the
18 claims put forward by either in the complaint or the
19 experts that you have retained.

20 Q. Did you look for evidence of agreements
21 between Varsity and USASF that favored Varsity over
22 other competitors?

23 A. I -- I don't know how to think about the
24 question you just asked because a -- the question,
25 from an economic perspective, is did they collude in

1 a way to harm competition or consumers? I'm not
2 sure that's the economic question to -- to examine.

3 Q. Okay. Well, let me -- let me -- let me
4 make sure I ask my question. Did you look for
5 evidence of agreements between Varsity and USASF
6 that favored Varsity over other competitors?

7 MS. RICCIO: Objection.

8 THE WITNESS: I can't. I don't know how to
9 answer it because it may be that there's a provision
10 that the entire USASF board agreed to, that all
11 members voted for, including independent event
12 producers, that in the end benefited Varsity more
13 than, say, someone else.

14 And so I'm not sure how to answer your question.
15 That's not collusion. They -- everyone -- USSF --
16 USASF promulgated a rule and ultimately -- I'm --
17 I'm just using as a hypothetical -- Varsity
18 benefited more than others. And, under the way you
19 framed the question, that would suggest some form of
20 favoritism.

21 But, from an economic analysis, that's not the
22 case because there was a decision that was made that
23 ultimately Varsity may have benefited from and that
24 would not be, quote, "favoritism," in a way that I
25 would think about it.

1 BY MR. SAVERI:

2 Q. Well, if you found examples where there
3 were policies or rules that were adopted or put into
4 place by USASF that Varsity -- that advantaged
5 Varsity over other competitors, would you, as an
6 economist, look or analyze that evidence for the
7 purposes of determining whether there was a
8 conspiracy or collusion?

9 A. I would dig deeper in that circumstance
10 about why that rule was put into place and the
11 effects of that rule.

12 Q. Now, with respect to your opinion about
13 whether or not there was a conspiracy between USF --
14 USASF and Varsity, did you understand it was your
15 assignment to include -- your assignment to include
16 the task of finding such evidence and refuting it?

17 MR. KAISER: Objection.

18 THE WITNESS: My task was to examine the claims
19 put forward in the complaint as well as put forward
20 by the experts that you retained in this case in
21 assessing whether the claims that they've made were
22 consistent with collusion and inconsistent with
23 independent conduct by USASF.

24 BY MR. SAVERI:

25 Q. Okay. Well, did you -- you -- you

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1 understand the part of our -- the claim that we make
2 in this case is that there was an illegal agreement
3 between USASF and Varsity; it was illegal under the
4 antitrust laws?

5 A. I understand that, yes.

6 Q. And did you view it as part of your task to
7 look for evidence of agreement and -- and refuting
8 it?

9 MS. RICCIO: Objection.

10 THE WITNESS: I -- I don't view my task as,
11 quote, "refuting it." I view my task as looking at
12 the evidence and assessing whether the evidence is
13 consistent with collusion and inconsistent with
14 independent conduct.

15 Whether -- if it -- if it's -- if the evidence
16 showed that it was consistent with collusion and
17 inconsistent with independent conduct, I would state
18 as such. And if the evidence is inconsistent with
19 collusion and consistent with independent conduct, I
20 will state as such.

21 BY MR. SAVERI:

22 Q. Did you, in your analysis, find any
23 contractual agreements between Varsity employees
24 and employees of USASF?

25 A. I'm not a lawyer; so I'm going to defer to

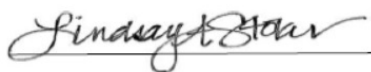
1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ORANGE)
4

5 I, LINDSAY STOKER, Certified Shorthand
6 Reporter qualified in and for the State of California,
7 do hereby certify:

8 That the foregoing transcript is a true and
9 correct transcription of my original stenographic notes;

10 I further certify that I am neither attorney
11 or counsel for, nor related to or employed by any of the
12 parties to the action in which this proceeding was
13 taken; and, furthermore, that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties hereto or financially interested in the action.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this 16th day of November, 2022.

18 
19

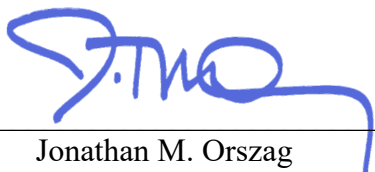
LINDSAY STOKER
CSR 14373

Errata Sheet for Deposition Transcript**Case:** *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Action No.: 2:20-cv-2600*Jones, et al. v. Bain Capital Private Equity, et al.*, Action No.: 20-cv-02892**Date:** November 15, 2022**Deponent:** Jonathan M. Orszag (Day 2)

November 15, 2022				
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286	19	business	business document	Clarification
324	15	office	offices	Transcription Error/Clarification
333	24	free writing	free riding	Transcription Error
337	18	nitpicking on	nitpicking one	Transcription Error
342	2	agreement," by definition	Agreement," is by definition	Transcription Error/Clarification
351	20	involved	involvement	Transcription Error/Clarification
361	16	experience are	experiences are	Transcription Error/Clarification
371	22	Varsity that	Varsity vote that	Clarification
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391	11	illegible	ineligible	Transcription Error
414	24	2- to \$300,000	\$200,000 to \$300,000	Clarification
424	24	2- and \$300,000	\$200,000 and \$300,000	Clarification
440	16	biassing	biasing	Transcription Error
441	9	Varsity	USASF	Clarification
471	9	Silting	Sitting	Transcription Error
481	5	biassing	biasing	Transcription Error

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2022.



Jonathan M. Orszag

EXHIBIT 3

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

JESSICA JONES, et al.,
Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,
Defendants.

Case No. 2:20-cv-02892

EXPERT REPORT OF JONATHAN M. ORSZAG

September 23, 2022

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

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Appendix A: Curriculum Vitae of Jonathan M. Orszag

Appendix B: Materials Relied Upon

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I. Qualifications

1. My name is Jonathan Orszag. I am a Senior Managing Director and member of the Executive Committee of Compass Lexecon, LLC, an economic consulting firm. My services have been retained in the past by a variety of public-sector entities and private-sector firms ranging from small businesses to Fortune 500 companies. These engagements have involved a wide array of matters, from entertainment and telecommunications issues to matters affecting the sports and retail industries. I have provided testimony to administrative agencies, the U.S. Congress, U.S. courts, the European Court of First Instance, and other domestic and foreign regulatory bodies on a range of issues, including antitrust (competition) policy, industry structure, and fiscal policy.
2. Previously, I served as the Assistant to the U.S. Secretary of Commerce and Director of the Office of Policy and Strategic Planning, and as an Economic Policy Advisor on President Clinton’s National Economic Council. For my work at the White House, I was presented the Corporation for Enterprise Development’s 1999 leadership award for “forging innovative public policies to expand economic opportunity in America.” I have taught at both the University of Southern California and UCLA; most recently, I served as a Lecturer at UCLA, teaching a class on antitrust and merger analysis.
3. I received a M.Sc. in economic and social history from Oxford University, which I attended as a Marshall Scholar. I graduated summa cum laude in economics from Princeton University, where I was elected to Phi Beta Kappa. I have been named by Who’s Who Legal as one of the most highly regarded competition economists in the world.
4. I have testified or consulted on matters of antitrust and competition policy, liability, and damages in many cases covering a wide range of industries, including—but not limited to—automotive, entertainment, technology, transportation, pharmaceuticals, insurance, pay television, medical devices, and financial services.
5. I have been active in applying economic analysis to the sports and media sectors for many years. For example, I have written papers on the economics of college sports and the application of labor market tournament theory to the PGA TOUR. I have also advised an NBA team on the fair market value of its media rights; advised cable and satellite companies on the fair market value of sports programming; worked on mergers in the sports industry, such as the TaylorMade-Adams merger; advised a players union in its negotiations with a league; testified regarding the impact of various regulations on college sports; and worked on other cases at the intersection of the sports and the media sectors.
6. My involvement in the sports sector extends beyond my academic and consulting work. I serve on the Board of Trustees of The First Tee program—the foundation arm of the PGA Tour, which seeks to promote life skills and leadership through golf—and I am on the Board of Governors of the TGR Foundation (formerly the Tiger Woods Foundation). I am currently a minority investor in a minor league baseball franchise and formerly a minority investor in the Milwaukee Bucks.
7. My curriculum vitae, including a list of matters in which I have testified, is attached as Appendix A. The rate charged by Compass Lexecon for my work on this matter is \$1,500 per hour. I have no financial interest in the outcome of this proceeding.

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II. Assignment and Summary of Conclusions

8. Plaintiffs in this case allege that Defendants Varsity Brands, LLC (“Varsity Brands”); Varsity Spirit, LLC (“Varsity Spirit”); Varsity Spirit Fashion & Supplies, LLC (“Varsity Spirit Fashion”) (collectively with Varsity Brands and Varsity Spirit, “Varsity”); U.S. All Star Federation, Inc. (“USASF”); Jeff Webb; Charlesbank Capital Partners LLC (“Charlesbank”); and Bain Capital Private Equity (“Bain”) conspired to raise, fix, and stabilize the prices associated with Competitive Cheer.¹ In particular, Plaintiffs claim that USASF conspired with Varsity and others to engage in anticompetitive conduct that resulted in Varsity acquiring monopoly power in the markets for cheer competitions, cheer apparel, and cheer camps.²
9. Plaintiffs have retained Drs. Janet Netz, Randal Heeb, Jen Maki, and Mr. James Aronoff as economic experts. In her report, Dr. Netz claims that Varsity and the USASF acted in concert to harm competition, for example, by engaging in coordinated conduct to promulgate USASF rulings that favored Varsity over its rival cheer competition event producers; to disadvantage and eliminate rival event producers; and to enforce rules selectively against Varsity’s rivals.³ Dr. Netz also offers the opinion that, absent the alleged conspiracy, “USASF would act as an independent sanctioning body in the best interests of the sport as a whole, on behalf of all event producers, apparel providers, camp providers, coaches, and athletes.”⁴ In his report, Dr. Heeb claims that Varsity’s conspiracy with USASF to disadvantage Varsity’s competitive rivals, and other anticompetitive conduct, resulted in an increase in Varsity’s market power in cheer competitions, cheer apparel, and cheer camps.⁵ In her report, Dr. Maki claims that Varsity used its market power to charge anti-competitive prices and estimates class-wide damages related to competition registration, apparel, and camp registration.⁶ Finally, Mr. Aronoff was asked to offer “recommendations for structural relief with regard to the alleged anti-competitive conduct of the Defendants.”⁷
10. Plaintiffs seek to certify three damages classes of persons who indirectly paid Varsity for “(a) registration, entrance, or other fees and expenses associated with participation in one or more Varsity Cheer Competitions, including registration fees to USASF; (b) Varsity Cheer Apparel; and (c)

¹ *Jessica Jones, Michelle Velotta, and Christina Lorenzen on Behalf of Themselves and All Others Similarly Situated, v. Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashion & Supplies, LLC; U.S. All Star Federation, Inc.; Jeff Webb; Charlesbank Capital Partners LLC; and Bain Capital Private Equity*, Complaint, December 10, 2020 (hereinafter, *Complaint*), ¶ 1.

² *Complaint*, ¶ 117. I understand that Plaintiffs do not limit harm to All Star Cheer (and focus on both All Star and school cheer). This report only addresses claims related to USASF, i.e., All Star Cheer.

³ Expert Report of Janet S. Netz, Ph.D., June 20, 2022 (hereinafter, *Netz Report*), pp. 4, 69.

⁴ *Netz Report*, p. 5.

⁵ Expert Report of Randal Heeb, Ph.D., June 20, 2022 (hereinafter, *Heeb Report*), ¶¶ 52-54.

⁶ Expert Damages Report of Jen Maki, June 20, 2022 (hereinafter, *Maki Report*), ¶ 29.

⁷ Expert Report of James H. Aronoff, June 20, 2022 (hereinafter, *Aronoff Report*), ¶ 13.

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Varsity Cheer Camp Fees.”⁸ Plaintiffs define the class period for all three proposed classes as December 10, 2016 until “the continuing Exclusionary Scheme alleged” has ended (“class period”).⁹

11. I have been asked by counsel for USASF to review and assess, from an economic perspective, whether the available evidence is consistent with Plaintiffs’ allegations that USASF conspired with Varsity to foreclose competition and raise prices in cheer competitions, apparel, and camps. Specifically, I have been asked to offer an independent economic assessment of:

- (1) The opinions and analyses in Dr. Netz’s report as they relate to the role of USASF as a sanctioning organization for All Star Cheer and to the alleged conspiracy with Varsity.
- (2) Additional claims made by Drs. Heeb, Maki, and Mr. Aronoff, related to USASF’s role in the alleged conspiracy.¹⁰

I do not attempt to respond in detail to every opinion offered by Drs. Netz, Heeb, Maki, and Mr. Aronoff. The absence of an explicit response in this report to any specific opinion of Plaintiffs’ economic experts should not be interpreted as agreement.¹¹

12. Based on my analysis of Plaintiffs’ experts’ reports, the factual discovery record in this case, interviews with current and former USASF employees,¹² and my years of experience in analyzing competition issues in numerous industries, including sports, I have concluded that the economic evidence in this case is not consistent with Plaintiffs’ allegations of a conspiracy by which USASF coordinated with Varsity to harm competition. More specifically:
- (1) One of USASF’s key responsibilities is to establish and enforce rules governing All Star Cheer that apply to all USASF-sanctioned competitions. I find that USASF’s rules are broadly consistent with its missions and with the types of rules implemented by other sports leagues and sanctioning organizations.
 - (a) USASF—like other sanctioning organizations—does not have a singular mission or purpose. Instead, USASF has multiple objectives that it must balance as it develops rules and standards for All Star Cheer.
 - (b) The structure of USASF’s rules also played a critical role in incentivizing participants—including event producers—to join USASF at the time of its inception and to adhere to its rules subsequently.

⁸ Netz Report, pp. 1-2. See also Complaint, ¶¶ 29-31.

⁹ Complaint, ¶¶ 29-31; Netz Report, p. 2.

¹⁰ I understand than another expert for the Defendants focuses on the allegations with respect to Varsity.

¹¹ I am also submitting a separate expert report in a related case, *Fusion Elite All Stars, et al., v. Varsity Brands, LLC, et al.*, on September 23, 2022, which covers similar topics to this report. I incorporate that report by reference to the extent applicable and reserve the right to rely on any facts and opinions stated in that report as applicable.

¹² In preparing my opinions, I, and my team at my direction, conducted interviews with Jim Chadwick (former President, USASF) (interview conducted September 20, 2022) and Steve Peterson (Vice President of Events & Corporate Alliances, USASF) (interview conducted September 20, 2022).

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- (2) Plaintiffs’ experts provide no economic basis to support Plaintiffs’ allegation that USASF was part of a conspiracy with Varsity during the alleged class period.
 - (a) Plaintiffs’ experts fail to describe how USASF conspired with Varsity during the class period. Despite claiming that USASF conspired with Varsity to implement rules that favored Varsity or to enforce rules selectively against Varsity’s rivals, Plaintiffs’ experts do not provide details of what Defendants agreed to or how they aimed to implement the alleged conspiracy.
 - (b) In particular, Plaintiffs’ experts do not identify a single rule enacted, changed, or deviated from by USASF during the class period that materially enhanced Varsity’s competitive position above what Varsity obtained by itself.
 - (i) In fact, most of the rules that Plaintiffs’ experts point to were in effect prior to the alleged class period—many of them in some form since USASF’s creation.
 - (c) Plaintiffs’ experts fail to show that USASF’s rules and behavior—at the time they were implemented—were both consistent with conspiratorial conduct and inconsistent with legitimate, procompetitive conduct.
 - (d) Plaintiffs’ experts’ allegations related to Varsity having control of USASF not only fail to demonstrate a conspiracy between USASF and Varsity, but they, in fact, point at actions that are, in principle, *procompetitive*—because Varsity contributed to the development of USASF as a sanctioning organization, which benefited all its members. Moreover, most of these alleged influences over USASF would have been in place from USASF’s inception, and certainly prior to the alleged class period.
 - (e) Rather than identifying any material rules USASF implemented or selectively enforced for the benefit of Varsity, Plaintiffs’ experts simply speculate that, absent the alleged conduct, USASF would be expected to implement different rules. The fact that USASF, in hindsight, *could* have implemented different, perhaps better, rules years before the alleged class period does not imply that there was a conspiracy between USASF and Varsity, as Plaintiffs’ experts claim.
- (3) Plaintiffs’ experts discuss certain rules and behavior by USASF which, they claim, are anticompetitive and the result of coordination with Varsity. However, Plaintiffs’ experts’ claims are based on an incorrect understanding of the facts of the case and USASF’s rules; do not make sense as a matter of economics; and/or ignore relevant procompetitive reasons for the USASF rules and behavior they challenge.
 - (a) Moreover, in certain cases, Plaintiffs’ experts contradict each other with respect to the competitive or anticompetitive aspects of certain rules.
- (4) Plaintiffs’ experts also fail to analyze the available data to assess whether the USASF rules they challenge had, in fact, *any effect* in providing Varsity with a competitive advantage. The available evidence does not support such a conclusion.

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- (a) Central to Plaintiffs’ experts’ theory of harm are speculations that certain USASF rules favored Varsity in the allocation of events that grant bids for participation in USASF’s Cheerleading World Championship. However, the available data directly contradict Plaintiffs’ experts’ speculations, and instead show that, during the class period, there was no material change in Varsity’s share of these events beyond what Varsity obtained unilaterally (*i.e.*, through acquisitions of event producers). As such, Plaintiffs’ experts’ speculations are contradicted by the record evidence.
 - (b) In fact, Plaintiffs’ experts’ own empirical analyses are inconsistent with the claim that USASF materially enhanced Varsity’s competitive position in the dissemination of bids to the Cheerleading World Championship above what Varsity obtained by itself.
 - (5) All in all, I have found the conduct by USASF challenged by Plaintiffs’ experts to be consistent with legitimate, non-conspiratorial behavior for a sanctioning organization, and I have found nothing in USASF’s rules and regulations that provides Varsity with an anticompetitive advantage over what Varsity can or has obtained by itself.
13. The remainder of this report develops the support for these conclusions in more detail. In Section III, I briefly describe All Star Cheer and USASF as its sanctioning organization, as the key backdrop against which Plaintiffs’ allegations must be assessed. In Section IV, I show that Plaintiffs’ experts’ claims of a conspiracy between USASF and Varsity are unsupported by economic evidence. In Section V, I provide a more detailed analysis of each behavior by USASF discussed by Drs. Netz, Heeb, Maki, and Mr. Aronoff in their expert reports and explain why such actions were consistent with rational, independent (*i.e.*, pro-competitive) behavior. A list of the materials I have relied upon in reaching my conclusions is included as Appendix B. I reserve the right in the future to incorporate into my analysis any additional evidence that may emerge.

III. Background on All Star Cheer and USASF

14. As background for understanding Plaintiffs’ allegations and my opinions, I briefly describe All Star Cheer and the roles of USASF.

A. All Star Cheer

15. All Star Cheer is an athletic competition in which teams of athletes perform 2 ½ minute choreographed routines incorporating elements of cheerleading, dance, and stunting.¹³ Unlike in traditional sideline cheerleading, where cheerleaders support and generate enthusiasm for other athletic teams, the primary purpose of All Star Cheer is competition. All Star Cheer teams are

¹³ USASF, *What is All Star Cheer?*, <https://www.usasf.net/cheer>.

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typically organized through independent gyms (“All Star Gyms”) and are not affiliated with schools or academic institutions.^{14, 15}

16. All Star Cheer teams often participate in multiple events during the regular season,¹⁶ which runs from October to April.¹⁷ Teams may be invited to compete in end-of-season events, which take place at the end of or after the regular season, based on their performance at regular-season competitions.¹⁸ There are multiple end-of-season events for All Star Cheer participants in the United States: (i) The Cheerleading World Championship (“Worlds”), which is hosted by USASF and is the premier international championship for elite All Star Cheer teams, held each year at the ESPN Wide World of Sports Complex at Walt Disney World;¹⁹ (ii) The U.S. Finals, which takes place in multiple locations across the country, and is open to several levels of All Star Cheer teams;²⁰ (iii) The Summit, which takes place at Walt Disney World, and is open to several levels of All Star Cheer teams;²¹ (iv) The Pinnacle Cheerleading Championship, which is hosted by JAMZ Cheer & Dance;²² (v) Surf’s Up

¹⁴ *Id.*

¹⁵ I understand that Plaintiffs’ experts analyze competitive cheer (including All Star and school cheer) as a single market (see, e.g., *Netz Report*, § III.B.2). This report and the analysis herein focus specifically on All Star Cheer, since that is the only discipline relevant to USASF (see *infra*, ¶ 17). Similarly, this report does not address any allegations by Plaintiffs’ experts related to cheer camps or pricing in the market for camps, where I understand USASF has no involvement.

¹⁶ See, e.g., Deposition of Jim Chadwick, April 15, 2022 (hereinafter, *Chadwick Dep.*), 342:16-18.

¹⁷ I understand that the end-of-season events, such as Worlds, are typically held in late April or early May, following the end of the regular season. See, e.g., Deposition of Steve Peterson, March 9, 2022 (hereinafter, *Peterson Dep.*, March 9, 2022), 34:23-35:1; *Chadwick Dep.*, 71:11-14. See also, The Cheerleading Worlds, *Countdown To Worlds And Future Dates*, <https://thecheerleadingworlds.net/future-dates/> (showing Worlds scheduled in late April).

¹⁸ See, e.g., *Chadwick Dep.*, 59:2-13, discussing the bid allocation process for The Cheerleading World Championship (“[I]f you’re going to have Worlds to be the Super Bowl, then there needed to be a way—an organized way to determine who—should go... So the intent was to have the largest, most prestigious competitions. The winners of those that would beat the most teams would then qualify to go to the World Championship.”); *Peterson Dep.*, March 9, 2022, 127:5-9 (“Q. What is your understanding of a Summit bid event? A. It’s an event qualifier for [...] Summit bids that is offered by the company.”). I understand that there may be some end-of-season events that are “open,” in that they do not require an invitation to participate.

¹⁹ The Cheerleading Worlds, <https://thecheerleadingworlds.net/> (“More than 120 USASF/IASF member event producers across the U.S. and in over 40 countries around the world qualify top teams at their premier national championships to compete at Worlds. This international event brings together more than 9000 cheer and 3500 dance athletes to vie for world champion titles in senior and international club divisions and categories.”).

²⁰ Varsity, *The U.S. Finals*, <https://www.varsity.com/all-star/competitions/end-of-season-events/us-finals/>.

²¹ Varsity, *The Summit Championship*, <https://www.varsity.com/all-star/competitions/end-of-season-events/the-summit/>. In recent years, The Summit has expanded to include teams from outside of the United States.

²² JAMZ, *The Pinnacle Cheerleading Championship*, <https://www.jamz.com/the-pinnacle>.

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Grand National Championship, which is hosted by Shout! Cheer and Dance;²³ (vi) The One Cheer & Dance Finals, which takes place at multiple locations across the country and is hosted by a collective of event producers;²⁴ (vii) The Open Championships, which takes place at multiple locations across the country and is hosted by a non-USASF member event producer;²⁵ and (viii) Allstar World Championship, which takes place in Orlando, Florida, and is also hosted as part of the Open Championships series.²⁶ I provide additional detail on the process through which All Star Teams compete at specific sanctioned events (“Worlds Bid Events”) to receive invitations (“Worlds Bids”) to USASF’s Worlds later in this section.

B. USASF’s Role in All Star Cheer

17. USASF was formed in the 2003-2004 timeframe,²⁷ with the goal of “making All Star a safer sport by establishing fair and consistent rules and competition standards.”²⁸ As the sanctioning organization for All Star Cheer, USASF develops and enforces standardized sets of rules for competition (including rules pertaining to routine length, complexity, and apparel)²⁹ and judging that apply to all Federation-sanctioned competitions—including Worlds, the foremost All Star event—and determines which competitions meet its sanctioning criteria.³⁰ USASF’s rules apply specifically to its All Star Cheer members in the U.S.³¹ I understand that the rules governing other cheerleading disciplines are set by their corresponding sanctioning bodies.³²
18. USASF—like other sanctioning organizations—does not have a singular mission or purpose. Instead, USASF has multiple objectives that it must balance as it develops rules and standards for All Star Cheer. The organization’s bylaws identified at least three goals around the time of its inception:³³

²³ Shout Cheer & Dance, *Surf’s Up Grand National Championship*, <https://www.shoutcheer.com/2022-23-events/surf-s-up-grand-national-championship>.

²⁴ ONE, *The ONE Cheer & Dance Finals*, <http://www.theonefinals.com/>.

²⁵ The Open Championships, *Championships*, <https://openchampionshipseries.com/2023-championships/>.

²⁶ The Open Championships, *Allstar Worlds Championship*, <https://theallstarworldchampionship.com/>.

²⁷ I understand that USASF was informally established in 2003 but was not formally incorporated until February 2004. See, USASF, *Mission & History*, <https://www.usasf.net/about>; USASF_00032403-5.

²⁸ USASF, *Mission & History*, <https://www.usasf.net/about>.

²⁹ See, e.g., USASF, 2022-2023 USASF Cheer Rules, https://usasfmain.s3.amazonaws.com/Rules/USASF_Cheer_Rules_22-23.pdf.

³⁰ USASF, *Boards and Committees*, <https://www.usasf.net/boards-committees>.

³¹ I understand that USASF also serves as the sanctioning body for All Star Dance competitions in the United States. For the purposes of this report, I focus only on USASF’s role as it pertains to All Star Cheer.

³² For example, rules for School Cheer are set by the National Federation of State High School Associations (NFHS). See, NFHS, *Spirit*, <https://www.nfhs.org/activities-sports/spirit/>.

³³ USASF_00032456-66 (*Chadwick Dep.*, Exhibit 4), at 56 (*emphasis added*). Jim Chadwick, former President of USASF, further identified multiple goals for USASF when it was established. See *Chadwick Dep.*, 34:8-25 (“At the beginning ... we were trying to create a uniform set of rules and a way to make sure people were qualified to do what they were doing such as coaching; to try and create standards for competitions; to

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The purposes and mission of the Corporation are to *establish rules for sanctioning and providing governance* for cheerleading, dance and spirit-related competitions and events; to provide *counseling in the administration* of cheerleading, dance and spirit-related competitions and events; and to *provide educational counseling services* in the fields of cheerleading, dance and spirit-related completions [sic] and events.

19. USASF’s updated mission statement likewise lists at least four similar, but slightly different, objectives:³⁴

To support and enrich the lives of our All Star athletes and members. We provide *consistent rules*, strive for a *safe environment* for our athletes, drive *competitive excellence*, and *promote a positive image* for the sport.

20. As such, USASF has had various objectives over its history—including some not explicitly stated in its mission—and has to simultaneously balance multiple goals in its role as sanctioning organization.
21. One of USASF’s key responsibilities is to establish and enforce rules governing All Star Cheer that apply to all USASF-sanctioned competitions, events, and member gyms. USASF’s rules directly contribute to its aforementioned objectives as a sanctioning organization:³⁵ For example, rules related to athlete apparel and the use of props, as well as rules specifying proficiencies required for level progression, allow USASF to prioritize the safety of athletes in competition. Similarly, rules governing the length of routines and the particular skills that can be performed at each level of competition encourage consistency and fairness in All Star Cheer.³⁶ These types of rules not only reinforce USASF’s mission, but are consistent with the types of rules implemented by other sports sanctioning organizations.³⁷

try and create some uniform safety practices for gyms... A way to pull the industry together to support best practices from rules, from safety, from all the difference facets that came into the sport.”).

³⁴ USASF, *Mission & History*, <https://www.usasf.net/about> (*emphasis added*).

³⁵ USASF, *Rules*, <https://www.usasf.net/rules> (“USASF rules, divisions and categories create a safe, consistent and fair platform for cheer and dance athletes at All Star events and practices. Safety, followed by skill progression and fair play, is the top priority when setting or adjusting any rule or guideline. The USASF also establishes guidelines for best practices in areas of All Star not directly involved with safety rules, but important to the integrity of the sport.”).

³⁶ I understand that USASF’s rules have remained largely consistent across the class period; however, USASF re-publishes and updates (as needed) its rules each season. *See, e.g.*, USASF_00046687-740 (2015-2017 USASF Cheer Safety Rules); USASF_00051808-63 (2016-2017 USASF Cheer Safety Rules); USASF_00030653-710 (2017-2019 USASF/IASF Cheer Safety Rules); USASF_00042331-89 (2018-2019 USASF Cheer Safety Rules); USASF_00022755-98 (2019-2020 USASF Cheer Rules).

³⁷ For example, I understand that the National Basketball Association (“NBA”), the sanctioning organization for men’s basketball (professional) in the U.S., determines a 3-point line of 23 feet, 9 inches at the top of the arc (*see*, NBA, *Rulebook*, <https://official.nba.com/rule-no-1-court-dimensions-equipment/>). But the National Collegiate Athletic Association (“NCAA”), another sanctioning organization for basketball in the U.S. (collegiate), determines a 3-point line of 22 feet, 1 ¾ inches at the top of the arc (*see, e.g.*, NCAA, *Men’s basketball 3-point line extended to international distance*, June 5, 2019,

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22. USASF is governed by a Board of Directors comprised of thirteen voting members and five advisory members. The Board includes representation from a variety of stakeholders including USASF staff members, Cheer and Dance member gyms and coaches, and sanctioned event producers.³⁸ USASF’s bylaws reserve two voting Board seats for USASF and an additional seven voting seats for event producers.³⁹
23. USASF also operates several boards and committees, each of which is focused on promoting a specific objective, or set of objectives, of the organization.⁴⁰ One specific committee at issue in this case, the Sanctioning Committee, is relevant to USASF’s work for two main reasons. As described on USASF’s website:⁴¹

The Sanctioning Committee works to develop and maintain: (1) the standards by which competitions qualify for USASF Sanctioning and the process and guidelines governing compliance, and (2) the approval process and criteria for event producer memberships including eligibility to offer Worlds bids.

24. USASF’s Sanctioning Committee is comprised of representatives from each event producer sanctioned to award Worlds Bids (also known as “Tier 1” producers). Each approved event producer holds a single voting seat on the committee, with the ability to designate its representative as it

<https://www.ncaa.org/news/2019/6/5/men-s-basketball-3-point-line-extended-to-international-distance.aspx>). In order to have athletic competitions, there must be agreement among competitors about the rules of the game—*e.g.*, one team cannot play from an 18 foot 3-point line, while the other plays from 21 feet. The role of a sanctioning body is to determine those common and consistent rules for all teams that play within the league. This responsibility was recognized by the U.S. Supreme Court. *See, National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma and University of Georgia Athletic Association*, Syllabus, Case No. 83-271 (1984), pp. 7-8 (quoting pp. 101-102) (“What the NCAA and its member institutions market in this case is competition itself—contests between competing institutions. Of course, this would be completely ineffective if there were no rules on which the competitors agreed to create and define the competition to be marketed. A myriad of rules affecting such matters as the size of the field, the number of players on a team, and the extent to which physical violence is to be encouraged or prescribed, all must be agreed upon, and all restrain the manner in which institutions compete... And the integrity of the ‘product’ cannot be preserved except by mutual agreement; if an institution adopted such restrictions unilaterally, its effectiveness as a competitor on the playing field might soon be destroyed. Thus, the NCAA plays a vital role in enabling college football to preserve its character, and as a result enables a product to be marketed which might otherwise be unavailable. In performing this role, its actions widen consumer choice—not only the choices available to sports fans but also those available to athletes—and hence can be viewed as procompetitive.”).

³⁸ USASF, *Boards and Committees*, <https://www.usasf.net/boards-committees>. *See also*, USASF_00032454-5, at 54: USASF Board Operating Guidelines and approved Bylaw Amendments (“The Board of Directors is made up of representatives from Competition Event Producers, gym owners/coaches, and the USASF. (Approved by the USASF Board of Directors on September 1, 2005)”).

³⁹ USASF_00032454-5, at 54.

⁴⁰ USASF, *Boards and Committees*, <https://www.usasf.net/boards-committees>.

⁴¹ *Id.*

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chooses, and Sanctioning Committee votes are decided by majority.⁴² Because USASF rules allowed for no more than 42 Tier 1 event producers for most of the alleged class period, the Sanctioning Committee also had no more than 42 members during that period.⁴³

C. The Role of Sanctioning Organizations in Promoting Competition⁴⁴

25. Sports activities (and associated competitions) require a certain degree of coordination among members for the simple reason that more than one team is required to have a competition. Unlike traditional product markets (*e.g.*, the market for tomatoes), in order to have a competition in sport activities, competitors need to agree to certain rules of the competition. As such, for the market to function, certain rules, restraints, and regulations are needed. And although similar rules are not necessary for competition in other markets—and might even be seen as anticompetitive—in sports activities those rules are procompetitive because they are necessary for those who wish to participate in the sport (as athletes, coaches, event organizers, media commenters, advertisers, etc.) to know when, where, and how the competitions will take place, and what is and is not allowed (*i.e.*, what the rules of competition are).
26. For example, Noll (2003) highlights many coordinated decisions that teams or leagues need to make, such as the format of the competitions; the number and hierarchy of leagues of different quality; the rules for membership; and the governance methods for deciding and enforcing rules and policies, including rules regarding the economic behavior of its members.⁴⁵ Participants typically rely on leagues and sanctioning organizations to create these regulations, which facilitate and enhance competitive interactions and are thus procompetitive.
27. Sanctioning organizations, like USASF, play a critical role in creating rules and best practices for safety and “competitive excellence,”⁴⁶ and in incentivizing participants to adhere to a league’s

⁴² USASF_00081398-402, at 399 (listing as one of the benefits of Tier 1 membership “[h]ave a seat to participate on the USASF Sanctioning Committee”). *See also*, Deposition of Steve Peterson, April 4, 2022 (hereinafter, *Peterson Dep.*, April 4, 2022), 340:15-18, 342:2-22, 343:16-20.

⁴³ *See, e.g.*, VAR00319008-10, at 08. I understand that USASF increased the number of Tier 1 event producers to 46 in 2020 (*Netz Report*, pp. 16-17), after deciding to extend the probationary period for events held in early 2020 that did not re-qualify as Worlds Bid Events based on team attendance. I further understand that for the 2021-2022 season, USASF changed its event producer membership structure to include five tiers, three of which have the ability to award Worlds Bids—each with different membership fees and event attendance criteria. *See, e.g.*, USASF, *Event Producer Membership Application*, https://usasf.formstack.com/forms/usasf_ep_membership_application_worldsbid_22_23, allowing applicants to select between three “Worlds Bid Membership Level[s]”.

⁴⁴ In this section, I use the term “competition” to discuss how teams compete in athletic events, and not to refer to “competition” within a marketplace, as is often analyzed in antitrust economics.

⁴⁵ *See* Noll, Roger G. (2003), “The Organization of Sports Leagues,” *Oxford Review of Economic Policy*, 19:4 (hereinafter, *Noll* (2003)), pp. 530-531.

⁴⁶ *See, e.g.*, Weistart, John C. (1977), “Player Discipline in Professional Sports: The Antitrust Issues,” *William & Mary Law Review*, 18:4 (hereinafter, *Weistart* (1977)), pp. 708-709 (“Sports enterprises would appear to

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established rules. Although participants in a league may initially agree on rules to govern competition, individual participants may see benefits from noncompliance and choose not to follow them. As Mitchell et al. (1999) write:⁴⁷

Most leagues have bylaws and rule books that run into the hundreds, and sometimes thousands, of pages. Although representatives of teams voluntarily come together to articulate a mission, write rules, and enforce procedures, members of those organizations regularly violate these rules. Not unlike nations attempting to prevent an arms race or to protect the global environment, sport teams find themselves torn between their individual short-term interests and their collective long-term interests. Upholding the league’s mission and fulfilling its rules helps maintain the fair competition essential to the sport but increases the risk of losing the game. Violating league rules might help win today’s game or the league championship but undermines the fair competition from which all teams generally benefit [].

28. This tension between short-term and long-term incentives can cause sports leagues to “unravel.” That is, it is not enough for a sanctioning organization, such as USASF, to simply establish rules that encourage “fair competition,” but it also must structure those rules (and any associated enforcement mechanisms) in such a way that participants are sufficiently incentivized to adhere to them.⁴⁸

Maintaining such competition often requires teams, inter alia, to limit roster-size agree on eligibility requirements, establish rules limiting drug use, and agree on minimum and maximum lengths of schedule. Yet the need for these rules arises precisely because although each team could often gain a competitive advantage if it could violate these standards without getting caught, an escalating spiral of such violations could lead to the unraveling of the league itself... Because teams always have the option to leave a league, *league rules and enforcement policies must be*

present clear examples of groups which need this authority for self-regulation. Not only are rules necessary for the successful staging of competition but in addition, the groups have an interest in insuring that their ventures remain free of illegal and fraudulent activities which might undermine fan support. Moreover, private regulation is necessary because traditional public legal remedies - those secured through the criminal process or through civil actions - are typically inadequate.”).

⁴⁷ Mitchell, Ronald, Todd Crosset, and Carol A. Barr (1999), “Encouraging Compliance Without Real Power: Sport Associations Regulating Teams,” *Journal of Sport Management*, 13 (hereinafter, *Mitchell et al.* (1999)), p. 217.

⁴⁸ *Mitchell et al.* (1999), pp. 218-219 (*emphasis added*). See also *id.*, p. 218 (“Although teams nominally delegate enforcement power to the league, teams retain considerable power over the league and its enforcement procedures. Teams can leave one league or association to join a new one, dismantle and reform leagues, or weaken the power of league offices if they so choose.”); and *Noll* (2003), p. 540 (“Typically, the chief executive serves at the pleasure of a majority of the teams, and can be removed without cause if a majority so desire. As a result, the league chief executive can exercise considerable authority in disciplining the bad behaviour of one owner or player, but is not likely to survive in office if a decision is made that harms most teams.”).

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strong enough to maintain adequate fair play and public trust, without being so restrictive that they cause the teams to rebel and reclaim the powers given to the league.

29. Indeed, testimony provided in this litigation reflects this tension, and describes it as a key motivation behind USASF’s creation. For example, Jim Chadwick, former president of USASF, explained that prior to USASF’s formation, event producers determined and modified their rules in response to requests from gyms, in order to better attract them to competitions.⁴⁹ However, a set of standardized rules of competition was necessary to make All Star “legitimate” and “safe,” “as opposed to what everybody called ‘the Wild West.’”⁵⁰ Jeffrey Fowlkes, who worked for Cheersport—a founding member of USASF—at the time of USASF’s inception, similarly explained that prior to USASF’s formation, each event producer set their own rules resulting in a lack of uniformity and safety concerns, and that uniform rules were necessary to “legitim[ize]” All Star.⁵¹
30. Depending on the sport and the context, sports leagues have addressed these tensions by implementing a variety of types of rules and membership structures. Similarly, leagues have been organized in dramatically different ways,⁵² for example, from those that have expanded over time by adding teams to others that have contracted by expelling their weakest members—even if they have not violated any rules.⁵³ Similarly, certain leagues have permanent, fixed membership while others regularly change their membership by replacing the weakest teams with the best teams in lesser leagues.⁵⁴

D. Worlds

31. Worlds is the final end-of-season event for elite All Star Cheer teams, and the culminating championship for the All Star Cheer season. The event was first held by USASF in 2004,⁵⁵ and “was

⁴⁹ *Chadwick Dep.*, 35:18-36:2 (“Event producers created different rules because a gym owner would say, ‘I have these teams, and if you would just adjust the divisions or the skills, then I would have a better chance of winning. So I’m not going to come to your competition unless you change this or that to favor my teams.’ And so, like, geographically, event producers had felt that they had created a competitive advantage for themselves by their rules.”).

⁵⁰ *Chadwick Dep.*, 37:7-9. *See also*, *Chadwick Dep.*, 37:18-38:3, describing why uniformity of rules was necessary to make All Star “legitimate”; *Chadwick Dep.*, 36:3-36:9, explaining that the lack of standardized rules led to “expense” and “hardship” for gyms and created “safety concerns” for athletes.

⁵¹ Deposition of Jeffrey Fowlkes, April 5, 2022 (hereinafter, *Fowlkes Dep.*), 37:19-38:11. *See also*, Deposition of John Newby, March 23, 2022 (hereinafter, *Newby Dep.*, *March 23, 2022*), 214:1-8, noting that “[i]t was kind of a Wild West” before Worlds was formed “as a rallying point”.

⁵² *See, e.g.*, *Noll* (2003), p. 551 (“Perhaps the greatest lesson to be learned from the study of comparative leagues is the amazing variety across sports and countries in how basically the same types of businesses have attempted to solve the same basic puzzles.”).

⁵³ *Id.*, p. 536.

⁵⁴ *Id.*, p. 531.

⁵⁵ The Cheerleading Worlds, <https://thecheerleadingworlds.net/>. *See also*, *Chadwick Dep.*, 54:4-6.

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designed to be the Super Bowl of cheerleading, a competition among the best of the best[.]”⁵⁶ Since the first championship in 2004, USASF has paid Varsity an annual fee to produce and run Worlds, and to “maintain the...relationship and contract” at Disney, where Varsity hosts other events.⁵⁷ USASF determined that Disney was a good venue for Worlds because it is a “great destination,” “family-oriented,” and “secure.”⁵⁸

32. To attend Worlds, All Star teams must receive an invitation to the championship, also known as a “Worlds Bid.”⁵⁹ Teams earn Worlds Bids based on their performance at one of the 42 regular-season competitions sanctioned by USASF to distribute Bids (“Worlds Bid Events”). Each Worlds Bid Event has a set number of Worlds Bids that it can award in a season, some of which cover a portion of the cost of attending Worlds.⁶⁰
33. USASF does not sponsor or organize any All Star events other than Worlds. However, as described above, based on established parameters, USASF’s Sanctioning Committee determines which events can award Worlds Bids (and how many) and has rules governing when and where those events can be held. I understand that USASF’s interest in Worlds Bid Events is derived from its interest in the success of Worlds, and thus on the collective ability of Worlds Bid Events to appropriately screen and select teams to compete at Worlds.

IV. Plaintiffs’ Experts Do Not Provide Economic Support for The Allegation that USASF Was Part of a Conspiracy

34. Plaintiffs’ experts provide no economic basis to support Plaintiffs’ allegation that USASF was part of a conspiracy with Varsity during the alleged class period. While they claim that USASF engaged in “coordinated conduct” with Varsity to “favor” Varsity and to selectively enforce its rules against

⁵⁶ *Chadwick Dep.*, 285:3-5. *See also, id.*, 53:23-54:3 (“It’s, essentially, the Super Bowl of cheerleading for All Star teams... I believe it is the most challenging and most prestigious event for All Star teams.”).

⁵⁷ VAR00253877-81, at 77. *See also, e.g., Chadwick Dep.*, 256:15-257:4, explaining the “operations” role that USASF paid Varsity to perform at Worlds. I understand that Varsity’s existing relationship with Disney was instrumental in USASF’s ability to host the first Worlds at its venues. (Interview with Jim Chadwick, September 20, 2022.)

⁵⁸ *Chadwick Dep.*, 232:23-233:5.

⁵⁹ *See, e.g.,* USASF_00048185-221 (2017 Cheerleading Worlds Registration Information), at 189-190; USASF_00050475-98 (2018 Cheerleading Worlds Registration Information), at 80-81; USASF_00051272-95 (2019 Cheerleading Worlds Registration Information), at 77.

⁶⁰ I understand that during the class period, Worlds Bid Events offered two types of Cheer Worlds Bids: (i) Paid Bids, which cover a set dollar amount per athlete and a predetermined number of coaches, to be used toward registration fees and lodging, and (ii) At-Large Bids, which represent an invitation to Worlds, but which do not include any sponsorship. Prior to the 2016-2017 season, event producers could also award partially paid bids, which covered 50% of the value of paid bids. *See, e.g., Peterson Dep.*, March 9, 2022, 49:6-50:21, 51:19-52:2, and 158:10-12. *See also, id.*, 55:3-22, explaining how the number of paid and at-large bids awarded by an event producer is determined.

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Varsity’s rivals,⁶¹ Plaintiffs’ experts fail to describe how USASF conspired with Varsity and do not identify a single rule enacted, changed, or deviated from by USASF during the class period that materially enhanced Varsity’s competitive position above what Varsity obtained by itself. Without providing any support for their claims, Plaintiffs’ experts speculate that, absent the alleged conspiratorial conduct, USASF would have implemented different sets of rules to prevent Varsity’s dominance.

35. In the rest of this section, I show that none of Plaintiffs’ experts proves liability or causation with respect to USASF—that is, none of Plaintiffs’ experts even attempts to show that USASF’s rules and behavior are both consistent with conspiratorial conduct and inconsistent with legitimate, non-conspiratorial conduct for a sanctioning organization such as USASF.

A. Plaintiffs’ Experts Fail to Identify Any Actions Taken by USASF that Created an Anticompetitive Benefit for Varsity During the Alleged Class Period

36. Plaintiffs’ experts present a lengthy discussion of various USASF rules that, they claim, benefitted Varsity. However, they fail to identify a single USASF rule that was implemented or changed during the class period that created a material, anticompetitive advantage for Varsity beyond what Varsity obtained by itself. They also fail to identify a single rule that USASF deviated from or failed to enforce during the class period that created a material, anticompetitive advantage for Varsity beyond what Varsity obtained by itself. Instead, as shown below, most of the rules Plaintiffs’ experts point to were in effect prior to the alleged class period—many of them in some form since USASF’s creation.⁶² For example:

⁶¹ See, *Netz Report*, p. 4 (“Varsity’s control of the USASF allows it to promulgate rulings that favor Varsity over its rival Cheer Competition producers. Varsity and the USASF engaged in coordinated conduct to disadvantage and eliminate rival Cheer Competition producers. The conduct included providing Varsity with information not provided to rivals, enforcing rules selectively against Varsity’s rivals, controlling the date and location of Cheer Competitions awarding ‘Worlds’ bids, prohibiting USASF members from working with rival sanctioning bodies, and targeting rivals’ events by offering a Varsity event in a close vicinity and around the same time to take away customer from competitors”); p. 66 (“Varsity and the governing body for All Star Competitive Cheer, the USASF, conspired to exclude and disadvantage Varsity’s rivals”). See, also, *Maki Report*, ¶ 10 (“Varsity’s monopoly power was attained through acquisition of its rivals in the relevant markets and maintained through exclusionary conduct and its control of the rule-making organizations that govern Competitive Cheer, such as the USASF, to create barriers to foreclose competition.”); *Heeb Report*, ¶ 53 (“Varsity and Defendants are alleged to have engaged in a course of anticompetitive behavior including ... conspiracy with USASF to disadvantage Varsity’s competitive rivals...”).

⁶² I also note that, as it relates to USASF, Plaintiffs’ experts’ analysis primarily focuses on data through 2020 and Plaintiffs’ experts provide no reliable analysis of the impact of any changes in USASF rules after 2020. See, e.g., *Maki Report*, ¶ 66 (discussing Varsity’s share of USASF Worlds bids through the 2019-2020 season); *Heeb Report*, ¶ 86 and Table 2 (discussing USASF membership through the 2018-2019 season); ¶¶ 87, 207-216 and Table 14 (discussing the tier system and Sanctioning Committee makeup in place through 2020); *Netz Report*, p. 16 (discussing Sanctioning Committee makeup at the end of 2020).

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- (1) Plaintiffs’ experts claim that USASF’s bylaws allowed Varsity to use acquisitions to acquire the majority of seats on USASF’s Board of Directors (“Board”)⁶³ and Sanctioning Committee.⁶⁴ However, I understand that the number and type of USASF Board seats were set forth in amendments to USASF’s Bylaws adopted in September 2005.⁶⁵ Likewise, the composition of the Sanctioning Committee—one seat for each Tier 1 event producer—has been in place since at least 2012.⁶⁶
- (2) Plaintiffs’ experts take issue with the fact that USASF restricted Tier 1 event producer membership to 42 bid events. Again, this rule has been in place since at least 2012.⁶⁷
- (3) Plaintiffs’ experts further take issue with the fact that “[p]riority for Tier 1 cheer membership is given to event producers based on their seniority as USASF members,” and that protecting event producers with seniority is predicated on the goal of “recogniz[ing] the contribution made by early USASF supporters whose financial support made the Worlds possible initially.”⁶⁸ These policies are memorialized in USASF’s Approval Process & Criteria for Tier 1 and Tier 2 Event Producers and Worlds Bid Eligibility at least as early as 2012.⁶⁹
- (4) Plaintiffs’ experts claim that the effect of USASF location/date rules that protect Worlds Bid Events is “to restrict new entry and competition among events.”⁷⁰ These rules (*i.e.*, Guideline 3.B) have been in place since at least 2012.⁷¹
- (5) Plaintiffs’ experts claim that Varsity took advantage of the requirement that “event producers must have at least 125 level five teams attend a competition to continue giving out bids in future years.”⁷² This requirement, however, was adopted and announced by December 2014.⁷³

⁶³ See, *e.g.*, *Heeb Report*, ¶ 96; *Aronoff Report*, ¶ 60.

⁶⁴ See, *e.g.*, *Maki Report*, ¶65; *Netz Report*, § V.D.7.b.

⁶⁵ USASF_00032454-5.

⁶⁶ USASF_00081398-402, at 399 (listing as one of the benefits of Tier 1 membership “[h]ave a seat to participate on the USASF Sanctioning Committee”).

⁶⁷ VAR00319008-10, at 08 (“For the 2012-2013 season, the USASF will not sanction more than 42 Cheerleading Worlds qualifying events in the US.”). See *also*, n. 43.

⁶⁸ *Heeb Report*, ¶¶ 207-208; *Netz Report*, pp. 17, 71.

⁶⁹ VAR00319008-10, at 08 (“Priority will be given to members based upon their seniority as USASF member event producers.”); *Id.*, at 10 (“Another goal is to recognize the contribution made by the early USASF supporters whose financial support made the Worlds possible initially.”).

⁷⁰ *Heeb Report*, ¶¶ 205-206; *Netz Report*, p. 71.

⁷¹ USASF_00090186-8 (discussing the 200-mile rule in effect in 2010).

⁷² *Netz Report*, p. 71; *Heeb Report*, ¶ 214. I understand that USASF’s policies include explanation of which All Star teams count towards the 125-team minimum, but that they do not restrict to level 5 teams, as Dr. Netz suggests.

⁷³ VAR00348574-5; VAR00348595-600.

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In Section V, I also show that that Plaintiffs’ experts’ claims do not make economic sense or are not supported by the record evidence.

37. In effect, Plaintiffs’ experts’ claims boil down to the assertion that USASF should have changed its rules—as established long before the alleged class period—in order to prevent Varsity’s alleged “control” of the relevant markets, and that the only plausible explanation for why it did not do so is the alleged collusion with Varsity.⁷⁴ Plaintiffs’ experts do not even attempt to show that the USASF rules they take issue with were both consistent with conspiratorial conduct and inconsistent with legitimate, non-conspiratorial conduct—at the time they were implemented.
38. Despite claiming that USASF conspired with Varsity to “enforce rules selectively against Varsity’s rivals,”⁷⁵ Plaintiffs’ experts provide no clarity on the details of what Defendants agreed to or how they aimed to implement the alleged conspiracy, and do not point to any behavior by USASF that took place during the alleged class period (*e.g.*, new policies, changing rules) that created a material, anticompetitive advantage for Varsity beyond what Varsity obtained by itself.
39. Rather than identifying any material rules USASF implemented for the benefit of Varsity during the class period (or that it “selectively” enforced against Varsity’s rivals), Plaintiffs’ experts simply speculate that, absent the alleged conduct, USASF “would be expected to implement different policies.”⁷⁶ Of course, the fact that USASF, in hindsight, *could* have implemented different, perhaps better rules (under some undefined criterion) years before the alleged class period does not imply that there was a conspiracy between USASF and Varsity, as Plaintiffs’ experts claim. As such, Plaintiffs’ experts fail to demonstrate any conspiracy involving USASF. Moreover, Plaintiffs’ experts do not even attempt to demonstrate empirically that their proposed rules would have been superior if they had been implemented in the past; nor do they demonstrate that the reason USASF did not implement their preferred rules was the conspiracy Plaintiffs allege.
40. Central to Plaintiffs’ experts’ arguments is the claim that the alleged conspiracy with USASF enabled or facilitated Varsity’s exclusion of its competitors and dominance of “all aspects of Competitive Cheer.”⁷⁷ To support such a claim, Plaintiffs’ experts need to demonstrate that, through coordinated, anticompetitive actions with USASF, Varsity obtained a presence in the marketplace that it would not have obtained by itself, for example, through its acquisitions and other conduct. That is, if Varsity’s current marketplace position is solely the result of its own actions (regardless of

⁷⁴ In some cases, rather than pointing to a particular action or rule implementation by USASF in conspiracy with Varsity during the alleged class period, Plaintiffs’ experts’ allegations appear to fault USASF for not changing its long-established rules in a way that would have directly discriminated against Varsity. *See, e.g., Aronoff Report*, ¶¶ 112, 114, 116, 122. As an economist, I will not opine on whether USASF was legally obligated or even allowed to enforce competition laws. I note, however, that sports organizations do not typically take the antitrust enforcer’s role—that responsibility falls on very capable and well-staffed government agencies, such as the U.S. Department of Justice and the Federal Trade Commission.

⁷⁵ *Netz Report*, p. 4; *Maki Report*, ¶ 71.

⁷⁶ *Netz Report*, p. 113.

⁷⁷ *See, e.g., Netz Report*, p. 4; *Heeb Report*, ¶ 215; *Maki Report*, ¶¶ 61, 65; *Aronoff Report*, ¶ 86.

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whether those actions were procompetitive or anticompetitive), then Plaintiffs’ experts cannot claim the alleged conspiracy with USASF had any effect on the marketplace.

41. In fact, Plaintiffs’ experts’ own empirical analyses are inconsistent with the claim that USASF materially enhanced Varsity’s competitive position in the marketplace above what Varsity obtained by itself. For example, Dr. Netz claims that, as a result of its acquisitions, by 2018, Varsity had reached a 75% to 85% revenue “market” share of “All Star Competitions.”⁷⁸ At the same time, she claims that Varsity eventually controlled 36 out of 46 of Worlds Bid Events (78%) and their associated seats on the USASF Sanctioning Committee.⁷⁹ As such, using Dr. Netz’s own calculations, she cannot show that Varsity enjoyed, to any material extent, any increased participation in Worlds Bid Events or the USASF Sanctioning Committee beyond what was driven by its acquisitions of event producers. In other words, Plaintiffs’ experts do not provide any evidence that USASF’s behavior created any increment in Varsity’s share of Worlds Bids or seats on the Sanctioning Committee beyond what Varsity obtained by itself through acquisitions and other independent behavior.⁸⁰

B. Plaintiffs’ Experts Ignore Varsity’s Procompetitive Contributions to USASF

42. Plaintiffs’ experts claim to describe the various ways in which Varsity “controlled” USASF from its inception. They describe, for example, Varsity’s initial funding of USASF; the sharing of office space; USASF’s agreement with Varsity for the processing of the payroll for USASF’s employees; and USASF’s licensing of Varsity’s trademarks.⁸¹ Not only do Plaintiffs’ experts’ fail to demonstrate that these claimed influences imply a conspiracy between USASF and Varsity, but they, in fact, point at actions that are, in principle, *procompetitive*—because Varsity contributed to the development of

⁷⁸ Netz Report, pp. 52, 99. Dr. Heeb estimates that Varsity had a 76% revenue share at the end of the 2017-2018 season (Heeb Report, ¶ 178).

⁷⁹ Netz Report, pp. 53, 101. Dr. Heeb claims that “Varsity owns 34 of the 42 Tier 1 event producers and therefore 34 of the 42 voting seats in the Sanctioning Committee.” (Heeb Report, ¶¶ 87, 210). Under Dr. Heeb’s calculation, Varsity’s share would be 81%. See, *id.*, Table 13.

⁸⁰ This is also evident in Dr. Heeb’s analysis, which concludes that “[t]hrough acquisitions,” Varsity’s share of paid bids increased to 80% in the 2018-2019 season (Heeb Report, ¶ 216 (*emphasis added*)).

⁸¹ Netz Report, § III.B.2, pp. 20-21 (“Varsity provided the USASF with financial assistance, including a \$1.8 million interest-free loan and a guaranteed ‘rainy day’ fund. The USASF stated that Varsity ‘secures the loan’ by retaining the rights to the USASF trademark and intellectual property. The USASF repaid the loan in 2013. Varsity and the USASF were enmeshed in other ways as well. For example, the USASF offices were located within Varsity’s offices, and through 2015, USASF employees were employees of Varsity and were paid by Varsity, which was then reimbursed by USASF.”). See also, Aronoff Report, ¶ 58 (“Varsity has exercised control over the USASF since the organization’s inception. The initial funding for the organization as provided by Varsity in the form of a \$1.8 million interest free loan. For at least the first 15 years of its existence, USASF offices were located at Varsity’s corporate address, a Varsity representative answered the phone for USASF, and USASF employees were paid directly by Varsity. Additionally, Varsity owned USASF’s trademarks until 2017.”); Heeb Report, ¶ 84 (“Though considered a separate entity, Varsity created and funded the USASF... From approximately 2004 through 2015, USASF shared office space with Varsity and during that period Varsity processed the paychecks of USASF employees under its own name, for which USASF reimbursed Varsity.”).

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USASF as a sanctioning organization, which benefited all members of the organization, including Varsity and other event producers.

43. There are several problems with Plaintiffs’ experts’ claims that Varsity “controlled” USASF. *First*, none of these observations by Plaintiffs’ experts imply that Varsity and USASF conspired to the benefit of Varsity or that USASF’s actions would have been any different but-for the alleged conspiracy. *Second*, most of these claimed influences were in place prior to the alleged class period—and some even ended prior to the class period (e.g., Drs. Netz and Heeb acknowledge that USASF moved out of Varsity’s offices in 2015).⁸² That is, Plaintiffs’ experts provide no evidence of any material change in rules or behavior during the class period to support their conclusion of conspiracy. *Third*, Plaintiffs’ experts provide no analysis that even attempts to show that the outsourcing of services to Varsity somehow created an anticompetitive advantage for Varsity in any relevant market.
44. As Plaintiffs’ experts acknowledge, USASF *repaid* Varsity for payroll expenses.⁸³ USASF similarly *paid* Varsity rent for the space it occupied.⁸⁴ Dr. Heeb also acknowledges that USASF has, from its outset, *paid* Varsity an annual management fee to produce Worlds,⁸⁵ and to leverage Varsity’s relationships at ESPN and Disney to host its championship there.⁸⁶ It is often efficient for a company or any organization of small size, such as USASF at its inception,⁸⁷ to outsource certain services (such as payroll, insurance, accounting, promotional events, etc.) rather than providing them in-house.
45. Indeed, providing or enabling USASF to outsource these services are important *contributions* that Varsity made to USASF. In fact, I understand that to a large extent it was Varsity’s initiative and funding that led to the creation of USASF—and the Worlds.⁸⁸ No other event producer contributed as much to the development of USASF—which in turn benefited the organization; event producers that joined as members or that follow USASF’s safety rules and best practices; as well as athletes, gyms, and coaches. As such, these contributions are procompetitive. Plaintiffs’ experts provide no analysis showing that the outsourcing of services to Varsity somehow created an anticompetitive advantage—and they certainly fail to identify how the renting of office space from Varsity, for example, influenced any USASF rules during the alleged class period.

⁸² See, Netz Report, pp. 20-21; Heeb Report, ¶ 84. As Mr. Aronoff acknowledges, USASF also obtained the rights to its trademarks less than one year into the alleged class period (Aronoff Report, ¶ 58, citing USASF_00032524-9 (Chadwick Dep., Exhibit 7) and Chadwick Dep., 154:4-156:5).

⁸³ Netz Report, p. 21; Heeb Report, ¶ 84.

⁸⁴ Chadwick Dep., 257:22-25 (“We were paying Varsity rent for the space we had all along.”).

⁸⁵ Heeb Report, ¶ 80 and n. 46.

⁸⁶ VAR00253877-81, at 77. See also, e.g., Chadwick Dep., 256:15-257:4, explaining the “operations” role that USASF paid Varsity to perform at Worlds.

⁸⁷ I understand that USASF currently only employs approximately 20 full-time employees. (Interview with Jim Chadwick, September 20, 2022.) See also, USASF, Staff, <https://www.usasf.net/staff>.

⁸⁸ See, e.g., Newby Dep., March 23, 2022, 227:12-15 (“[T]he USASF was a membership organization that – that [Varsity] helped to create and form and invest in, when nobody else was willing to do that.”); and Fowlkes Dep., 41:22-42:6.

C. Dr. Netz Provides No Reliable Evidence that USASF Failed to Uphold Its Mission

46. Dr. Netz concludes that “[i]n the but-for world ... USASF would act as an independent sanctioning body in the best interests of the sport as a whole[,]”⁸⁹ thereby implying that USASF failed to uphold its mission⁹⁰ of promoting the “best interests” of All Star Cheer participants.⁹¹ Dr. Netz also claims that USASF, in coordination with Varsity, engaged in conduct to disadvantage or eliminate Varsity’s competitors rather than acting as an independent sanctioning body “in the best interests of the sport as a whole.”⁹² Because Dr. Netz does not demonstrate that Varsity’s alleged dominance was caused by USASF’s actions (as opposed to Varsity’s own conduct), Dr. Netz assumes the conclusion that USASF failed to uphold its purported missions.
47. Moreover, as discussed in Section III.B above, and in Plaintiffs’ experts’ own reports,⁹³ USASF had multiple goals and missions. And such goals and missions may be, at times, in tension with each other. As such, it is incorrect to characterize USASF as having a single mission, assert that USASF’s actions failed to meet that particular mission (without even evaluating whether there are multiple ways to meet objectives), and then conclude that USASF behaved anticompetitively because it failed to meet that particular goal or mission.
48. For example, Dr. Netz implies that one of USASF’s goals is to promote “the best interests of the sport as a whole, on behalf of all event producers, apparel providers, camp providers, coaches, and athletes.”⁹⁴ However, in any economic activity, the interests of various participants will collide, such that any sanctioning organization cannot promote the interests of all industry participants at the same time. Similarly, whereas USASF strives to provide *safety* for All Star athletes, another of its goals is to promote *competitive excellence*.⁹⁵ It is common in sports to find this trade-off between safety and “aggressive play” that consumers of the sport may value.⁹⁶ For example, depending on who one asks, a particular tumbling rule may allow for more daring cheer routines and hence foster competitive excellence, or it may be considered simply unsafe. Plaintiffs’ experts’ simplistic arguments ignore that USASF’s rules have to balance these conflicting goals.

⁸⁹ Netz Report, p. 5.

⁹⁰ See, e.g., Netz Report, p. 84.

⁹¹ See, e.g., Netz Report, pp. 5, 113.

⁹² Netz Report, pp. 4-5.

⁹³ See, e.g., Netz Report, pp. 19-20 (“The stated objective of the USASF was the same as the NACCC – setting standard rules for All Star Cheerleading.”); Maki Report, ¶ 23 (“USASF is a non-profit organization founded by Varsity in 2003 with the goal of ensuring that All-Star is a safe sport ‘by establishing fair and consistent rules and competition standards’... The organization also establishes guidelines not directly related to safety rules, but ‘important to the integrity of the sport’.”).

⁹⁴ Netz Report, p. 5.

⁹⁵ USASF, *Mission & History*, <https://www.usasf.net/about> (“We provide consistent rules, strive for a safe environment for our athletes, drive competitive excellence, and promote a positive image for the sport.”).

⁹⁶ See, e.g., Wright, Joshua (2010), “Optimal Sanctions for NFL Hits,” *International Center for Law & Economics*.

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49. Finally, even if Dr. Netz were able to show that USASF failed to meet its objectives as a sanctioning organization (which she has not), all that does is to show that USASF did not do a good job as a sanctioning organization. Or, more precisely, that, with the benefit of hindsight, Dr. Netz would have preferred for USASF to adopt different rules many years before the class period. What it does not show is that USASF engaged in anticompetitive behavior in coordination with Varsity.

D. Plaintiffs’ Experts Ignore Data that Contradict Their Conclusions

50. Central to Plaintiffs’ experts’ theory of harm are speculations that certain USASF rules and behavior favored Varsity in the allocation of Worlds Bid Events—in particular, through Varsity’s presence in USASF’s Sanctioning Committee, USASF’s requirements for approving Worlds Bid Events, and Varsity’s competition with other event producers for hosting Worlds Bid Events. However, Plaintiffs’ experts do not review any data or conduct any empirical analysis to assess whether the USASF’s rules they challenge had, in fact, *any effect* on how many Worlds Bid Events Varsity controlled during the alleged class period.
51. As I discuss in more detail in Section V.B below, the available data on Worlds Bid Events directly contradict Plaintiffs’ experts’ speculations, and instead show that, during the class period, there was no material change in Varsity’s share of Worlds Bid Events beyond what Varsity obtained unilaterally (*i.e.*, through acquisitions of event producers). As such, Plaintiffs’ experts’ claims are simply speculative, unscientific, and not supported by the record evidence.

E. Plaintiffs’ Experts Provide No Reliable Evidence that the Alleged Conspiracy Impacted School Cheer

52. Although Plaintiffs’ experts’ theory of conspiracy points to a variety of alleged conduct involving Varsity and USASF (the sanctioning organization for All Star Cheer), Plaintiffs’ experts do not limit their allegations of harm from that conduct to All Star Cheer. Instead, Plaintiffs’ experts assert that the alleged conspiracy between USASF and Varsity created anticompetitive effects in markets related to “competitive cheer,” which they claim include participants from both All Star gyms *and school teams*.⁹⁷
53. Plaintiffs’ experts fail to explain how USASF rules and policies—such as the composition of USASF’s Board of Directors and Sanctioning Committee, or its competition or apparel rules—would have any impact on School Cheer, which consists of separate competitions and is governed by a different sanctioning organization that sets its own rules.⁹⁸ For example, even if Plaintiffs’ experts had provided evidence that USASF’s apparel rules were anticompetitive—*which they have not*,⁹⁹ those rules only apply to All Star Cheer competitions, and as such, without further analysis, Plaintiffs’ experts could only infer harm related to All Star. They cannot simply assume that any

⁹⁷ See, e.g., Netz Report, p. 3.

⁹⁸ See n. 32.

⁹⁹ See Section V.F.

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anticompetitive effect of USASF’s rules would *also* impact School Cheer—which represents the majority of Plaintiffs’ experts’ “competitive cheer” description.¹⁰⁰ In other words, Plaintiffs’ experts fail to demonstrate that any impact of the alleged conspiracy would have effects outside of All Star Cheer. If anything, they provide support for the fact that All Star represents only one segment within the broader discipline of cheerleading.

V. Analysis of USASF’s Rules and Behavior During the Class Period Demonstrates No Economic Evidence of Anticompetitive Conduct

54. I now discuss each of Plaintiffs’ experts’ main claims related to the alleged conspiracy between USASF and Varsity, and explain that the facts and economics of this case show that USASF’s behavior was either inconsistent with the alleged conspiracy, consistent with legitimate, pro-competitive behavior, or both.

A. Plaintiffs’ Experts Do Not Provide Economic Support for Their Claim that USASF Changed Its Governance Structure to Advantage Varsity

55. Plaintiffs’ experts claim that USASF’s governance structure and allocation of Board Seats for Event Producers allowed Varsity to “achieve[] implicit control of the Board of Directors of the USASF.”¹⁰¹ In particular, they claim that, as a result of Varsity’s acquisitions, Varsity has owned all of the permanent Board seats for event producers.¹⁰²
56. Notably, these allegations do not involve actions taken by USASF during the alleged class period. In fact, USASF’s bylaws governing the composition of its Board of Directors have been in place since September 2005—essentially since USASF’s inception.¹⁰³ And Plaintiffs’ experts do not point to a single piece of evidence suggesting that USASF in any way altered its existing rules, or its enforcement of them, to allow Varsity to gain board seats it would not have otherwise gained through its own behavior (*i.e.*, acquisitions made unilaterally). Further, nothing about the rules at

¹⁰⁰ See, e.g., *Heeb Report*, ¶ 127, noting that school cheer represents “about 60-75% of competitive cheer teams.”

¹⁰¹ *Netz Report*, p. 96.

¹⁰² *Heeb Report*, ¶ 203 (“Varsity either held or acquired all the event producers that have permanent seats on the USASF Board of Directors”); *Aronoff Report*, ¶ 60 (“Varsity effectively controls the USASF Board of Directors. Currently, the USASF Board has 13 voting seats: The Chairman, one senior staff member, four gym owners, and seven event producers. The seven event producer seats are for each of the event producers that founded the USASF. All seven event producer Board seats have come to be controlled by Varsity by way of acquisitions”). See also, *Netz Report*, pp. 21-22 (“Over time, Varsity acquired all of the competing rival event producers on the USASF Board of Directors, with the last acquisition (JAM Brands) coming in 2015... Currently, six of the thirteen USASF board seats are filled by permanent member brands, all of which are Varsity brands.”).

¹⁰³ USASF_00032454-5.

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issue even mention Varsity¹⁰⁴—nor do Plaintiffs’ experts claim that they do. Thus, Plaintiffs’ experts fail to show that USASF’s rules favored Varsity or that any other event producer could not have benefited from the rules in the same way.

57. Despite Plaintiffs’ experts’ failure to describe any role for USASF in Varsity’s obtaining Board seats, Mr. Aronoff suggests that, “[t]o provide relief, the USASF or any future governing body, can restructure the Board to better represent non-Varsity market participants and to ensure that no single Competitive Cheer market participant has inappropriate influence or control regarding governance decisions.”¹⁰⁵ However, Mr. Aronoff does not identify how USASF’s bylaws should change to “better represent non-Varsity market participants,” or whether it is even feasible—or would have been feasible at any point during the alleged class period—for USASF to change its bylaws to do so. Further, even if it were possible for USASF to have changed its bylaws in the way Mr. Aronoff suggests, one cannot conclude that doing so would necessarily be a good idea without conducting an economic analysis of how the change would affect event producers’ incentives and the resulting competitive effects (which Mr. Aronoff does not analyze).
58. Plaintiffs’ experts also ignore potential procompetitive reasons for USASF to implement its bylaws in 2005—more than ten years before the alleged conspiracy period. They fail to analyze, for example, (i) whether those rules—at the time—were necessary to ensure sufficient participation and investment by event producers; and (ii) whether alternative, more restrictive rules would have raised concerns among event producers, coaches, and gyms. As noted above, sanctioning organizations need to manage the tension between establishing rules that encourage fair competition and structuring those rules in such a way that participants—including Varsity, which led the initial efforts to develop USASF as a sanctioning organization—are sufficiently incentivized to adhere to them.¹⁰⁶ Considering the need to attract event producers at its inception, I find it reasonable for USASF to have the rules it had. And because Plaintiffs’ experts fail to analyze the procompetitive reasons for these bylaws, they cannot demonstrate that such bylaws are anticompetitive.
59. In fact, several of USASF’s bylaws and amendments were adopted in 2005 and 2006 at the behest of other, then non-Varsity, event producers. For example, Cheersport, a non-Varsity event producer in 2006 which had been allocated a USASF board seat, proposed the bylaw amendment requiring unanimous consent to replace any of the nine permanent USASF Board seats, as a means of protecting Cheersport’s voice on the Board.¹⁰⁷ JAMfest, another non-Varsity event producer at the time, likewise enjoyed similar protection with a permanent seat on the USASF Board “based on similar concerns.”¹⁰⁸ In other words, at the time that USASF’s bylaws and amendments were adopted in 2005 and 2006, they were adopted to protect the voice of other event producers on USASF’s Board. Similarly, USASF adopted a tiered membership system for event producers in 2005

¹⁰⁴ *Id.*

¹⁰⁵ *Aronoff Report*, ¶ 122.

¹⁰⁶ *See* Section III.C.

¹⁰⁷ VAR00351488-91, at 89.

¹⁰⁸ *Id.*

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“to allow companies to tailor their USASF membership level to both their budgets as well as the value they perceive receiving from the USASF.”¹⁰⁹ The reasoning behind this structure was to “help smaller companies join the USASF, allow larger companies that may not have All Stars as a major part of their competition mix reap more value from their USASF investment, and help companies that want to take full advantage of USASF membership to better differentiate themselves from the balance of USASF members.”¹¹⁰ In other words, contrary to Plaintiffs’ claims, the tiered membership system for event producers was designed to benefit *all* types of event companies that might want to join the USASF.

B. Plaintiffs’ Experts Do Not Provide Economic Support for Their Claims that USASF Changed or Selectively Enforced Its Rules Regarding World Bid Events to Favor Varsity

60. Plaintiffs’ experts take issue with USASF’s rules and policies regarding how and when to sanction Worlds Bid Events. They present a lengthy discussion that, in sum, concludes that USASF’s rules related to sanctioning—in particular, the composition of its Sanctioning Committee, how it evaluated applicants for new Worlds Bid Events, when (and how many) new Worlds Bid Events it sanctioned, and where and when those events could be held—advantage Varsity and “exclude and disadvantage” its rivals.¹¹¹ In this section, I address each of Plaintiffs’ experts’ allegations related to World Bid Events (and USASF’s sanctioning rules) and show that none of Plaintiffs’ experts’ claims support a conclusion of conspiracy between USASF and Varsity.
61. Critical to all these claims, however, is that Plaintiffs’ experts fail to offer any data analysis supporting their speculations—and their claims are simply contradicted by the record evidence. The available data on Worlds Bid Events show that there was no material change in Varsity’s share of Worlds Bid Events beyond what Varsity obtained unilaterally (*i.e.*, through acquisitions of event producers) between the 2015-2016 and 2019-2020 All Star seasons.¹¹² Specifically, the ten incremental Worlds Bid Events that Varsity gained during this period were all obtained when it acquired competing event producers.¹¹³
62. Further, only two new Worlds Bid Events were approved between the 2015-2016 and 2019-2020 All Star seasons, after two events—one owned by Varsity and one not owned by Varsity—failed to re-

¹⁰⁹ USASF_00027858-61, at 58.

¹¹⁰ *Id.*

¹¹¹ *See, e.g., Netz Report*, § V.B. *See also, Maki Report*, ¶ 65; *Heeb Report*, ¶ 206.

¹¹² The period for which data are available.

¹¹³ *See my backup materials.* I determined whether particular Worlds Bid Events were owned and operated by Varsity in each season based on USASF_00086125, USASF_00002776, USASF_00002779, USASF_00002782, USASF_00002785, VAR00010122-7, and VAR00462071-2, and supplemented my findings through communications my team had with Varsity counsel. I find that Varsity owned and operated 23 Worlds Bid Events in the 2015-2016 season and acquired ten additional events between the 2015-2016 and 2019-2020 seasons. The other nine Worlds Bid Events remained non-Varsity throughout the analysis period.

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qualify as Worlds Bid Events after the 2015-2016 season.¹¹⁴ Of the two events that were approved as replacements, one was owned by Varsity and the other remained non-Varsity through the end of the 2019-2020 season.¹¹⁵ That is, in net, the number of Worlds Bid Events owned by Varsity remained the same after these changes—contradicting Plaintiffs’ claims that USASF’s rules or behavior favored Varsity.

1. USASF Did Not Change the Membership of Its Sanctioning Committee to Advantage Varsity During the Class Period

63. Plaintiffs’ experts claim that Varsity obtained “majority control” of USASF’s Sanctioning Committee, and was therefore able to “use the Sanctioning Committee to disadvantage its rivals.”¹¹⁶ As discussed above, each approved Tier 1 event producer holds a single voting seat on the Sanctioning Committee and votes are decided by majority. Because USASF’s rules allowed for no more than 42 Tier 1 event producers during the alleged class period, the Sanctioning Committee also had no more than 42 members during this period. Varsity obtained its seats on the Sanctioning Committee unilaterally, *i.e.*, by organizing events that qualified as Tier 1 events under USASF rules or through acquisitions of event producers. Plaintiffs’ experts do not even claim to provide evidence that USASF took actions to further Varsity’s position in the Sanctioning Committee during this period.
64. Indeed, the rules for the composition of the Sanctioning Committee—one seat for each Tier 1 event producer, with a maximum of 42 Tier 1 producers—have been in place since at least 2012,¹¹⁷ a fact that none of Plaintiffs’ experts refute. And, at that time, Varsity did not have a majority of seats—in other words, at the time, the structure adopted by USASF gave non-Varsity event producers the majority of votes on the Sanctioning Committee.¹¹⁸ That Varsity obtained additional seats on the Sanctioning Committee by unilaterally acquiring the Tier 1 event producers that held those seats

¹¹⁴ I understand that Orlando Magic (a Varsity-owned event producer) and AmeriCheer (a non-Varsity event producer) each lost their status as a sanctioned Worlds Bid Event for the 2016-2017 season, after failing to meet USASF’s team attendance requirements. *See, e.g.*, USASF_00019528-31; USASF_00020057-8.

¹¹⁵ *See* my backup materials.

¹¹⁶ *Netz Report*, p. 96 (“The Sanctioning Committee, which is of crucial importance because of its power to allocate Worlds bids and approve the dates and locations of Worlds bid events, is composed of Tier 1 event producers that have Worlds bid events, with representation in proportion to the number of Worlds bid events. Prior to the JAM Brands acquisition [in 2015], Varsity held 16 of 35 seats on the USASF Sanctioning Committee. By adding JAM Brands’ five seats on the Sanctioning Committee, Varsity gained a majority control that it has maintained until today. This gave Varsity the ability to use the Sanctioning Committee to disadvantage its rivals.”). *See also, Heeb Report*, ¶¶ 205-206.

¹¹⁷ USASF_00081398-402, at 399 (listing as one of the benefits of Tier 1 membership “[h]ave a seat to participate on the USASF Sanctioning Committee”).

¹¹⁸ *See* my backup materials. Using USASF_00080543 and communications my team had with Varsity, I find that Varsity owned and operated no more than 14 out of 32 Tier 1 events in the 2011-2012 season. I understand that Varsity similarly held the minority of Sanctioning Committee seats in the 2010-2011 season, when the policy limiting Worlds Bid Events to 42 would likely have been voted on. I also understand that Guideline 3.B, which existed in the same form from at least 2012-2020, would also have been voted on and approved during a time when Varsity held only a minority of Sanctioning Committee seats.

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(under rules predating the class period) does not support Plaintiffs’ allegations of conspiracy between USASF and Varsity. Plaintiffs’ experts are unable to point to any rule that USASF implemented or changed—or any rule that it deviated from or did not enforce—that resulted in Varsity gaining seats on the Sanctioning Committee that it would not have otherwise obtained through its own (unilaterally performed) acquisitions.¹¹⁹ Further, nothing about the rules at issue even mention Varsity¹²⁰—nor do Plaintiffs’ experts claim that they do. Thus, Plaintiffs’ experts fail to show that USASF’s rules favored Varsity or that any other event producer could not have benefited from the rules in the same way.

65. Nonetheless, Mr. Aronoff suggests that “to provide relief, Varsity cannot have *any involvement* with or control over the bid assigning and bid awarding process” because he argues that Varsity’s involvement “is a conflict of interest and puts non-Varsity event producers at a disadvantage.”¹²¹ Mr. Aronoff’s recommendation is illogical because the same reasoning can be applied to any event producer: that is, if it is a conflict of interest for Varsity to participate in the Sanctioning Committee, it is conflict of interest for all other event producers. Mr. Aronoff ignores that there are clear procompetitive reasons for event producers that host Worlds Bid Events to have representation on the committee governing the approval of those events. Without that representation, these event producers may not have sufficient incentive to invest in hosting World Bid Events. Further, given their experience hosting Worlds Bid Events, such event producers are well equipped to advise on and propose sanctioning rules.¹²² To be clear, Mr. Aronoff does not go so far as to suggest that there is no role for event producers on the Sanctioning Committee *at all*—he simply calls for the exclusion of one specific event producer: Varsity. Thus, Mr. Aronoff’s claim, that there can be a role for event producers on the Sanctioning Committee, but that Varsity, the largest event producer, should be intentionally barred from participating, is contradictory and illogical, at best.

¹¹⁹ In fact, Plaintiffs’ experts appear to concede that Varsity obtained its Sanctioning Committee seats unilaterally (through its acquisitions). See, e.g., *Maki Report*, ¶ 65 (“Through its acquisitions, Varsity has gained permanent majority control of the USASF Sanctioning Committee.”); *Netz Report*, p. 22 (“When Varsity acquired JAM Brands in late 2015, it gained control of its seats on the Sanctioning Committee, giving it a permanent majority.”); *Netz Report*, p. 67 (“[B]y the end of 2015, Varsity controlled a permanent majority of the USASF Sanctioning Committee seats. This control was achieved in large part through its anticompetitive acquisition strategy...”); *Heeb Report*, ¶¶ 209-210 (“Voting seats in USASF’s Sanctioning Committee, which votes on rules for Worlds bids, were determined by the number of Tier 1 event producers. The total number of Tier 1 event producers was 42, so ownership of 22 Tier 1 event producers would provide a company with a majority of the voting seats in the Sanctioning Committee. Varsity owned, following its acquisition of competing event producers, substantially more than 22 Tier 1 event producers.”).

¹²⁰ USASF_00081398-402.

¹²¹ *Aronoff Report*, ¶¶ 111-112 (*emphasis added*).

¹²² Mr. Chadwick provided a similar reasoning for why USASF’s Sanctioning Committee is comprised of Worlds Bid Event producers. In particular, he noted that such event producers are well-suited to propose rules because they are among the most sophisticated and knowledgeable participants in All Star, and have the strongest incentives for Worlds Bid Events to be successful. (Interview with Jim Chadwick, September 20, 2022.)

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66. Further, as explained above, USASF did nothing to favor Varsity with respect to the composition of its Sanctioning Committee during the alleged class period. All that Plaintiffs’ experts claim is that Varsity, as the largest event producer, benefits more from certain preexisting rules. But such an argument could be made of any procompetitive action that benefits event producers—that is, in absolute terms, it would benefit more the larger event producers. It does not imply that the rule provides such firms with an anticompetitive advantage over their competitors, as Plaintiffs’ experts incorrectly suggest. Instead, Mr. Aronoff’s proposal appears to claim that USASF should implement rules that discriminate *specifically against Varsity*, by eliminating its role on the Sanctioning Committee. Plaintiffs’ experts fail to identify what those rules should look like, or whether they would be legal—if feasible at all—or to provide any analysis supporting that the results of such a rule change would be procompetitive. It is not the role of a sanctioning organization to adopt the discriminatory approach Plaintiffs’ experts propose.

2. Plaintiffs’ Experts Do Not Provide Economic Support that USASF Changed or Selectively Enforced Its Worlds Bid Event Approval Rules to Advantage Varsity During the Class Period

67. Plaintiffs’ experts also claim that USASF’s sanctioning rules governing Worlds Bid Event eligibility and approval “favor” Varsity.¹²³ In particular, Plaintiffs’ experts suggest that USASF’s policies of (i) limiting the number of Worlds Bid Events in a season and (ii) prioritizing “event producers based on their seniority as USASF members” when evaluating applications for new Worlds Bid Events provide Varsity with an advantage over competing event producers and aided Varsity in “fully control[ing] Tier 1 cheer competitions.”¹²⁴
68. With respect to the maximum of 42 Tier 1 events, Plaintiffs’ experts provide no reliable economic support for their claim that such a limit is anticompetitive. In particular, Plaintiffs’ experts present no analysis evaluating the competitive aspects of such a rule *vis-à-vis* alternative rules. Sanctioning organizations, or any event organizer for that matter, need to balance two opposing forces when hosting “championship” events: On the one hand, they want to make the event accessible so as to attract participants, but on the other hand, if everybody can access the event, the perceived value of the event (and the trophy) is diminished. As such, organizers have to somehow limit the number of

¹²³ Heeb Report, ¶ 207.

¹²⁴ Heeb Report, ¶ 207 (“USASF’s rules and procedures in structuring sanctioning events and the awarding of Worlds bids favored Varsity’s acquisition strategy as a mechanism to fully control Tier 1 cheer competitions. For example, USASF Tier 1 event producer membership was restricted to 42 bid events... Priority for Tier 1 cheer membership is given to event producers based on their seniority as USASF members”). See also, Netz Report, p. 71 (“As explained above, there has been a limited number of bids to The Cheerleading Worlds and these bids were allocated to event producers based on seniority.”); Heeb Report, ¶ 212 (“Producers seeking to award bids to USASF Worlds events submit applications to the Sanctioning Committee. Applications are prioritized based on membership date. Next, the Sanctioning Committee, where Varsity holds a majority of the voting seats, votes to approve World bids applications. Thus, not only does Varsity, as a senior member, have the advantage to retain its Tier 1 membership as an incumbent event producer, but has a majority of voting seats in the Sanctioning Committee that determines which event producers can offer new Tier 1 events.”).

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participants. Documents from USASF provide a similar reasoning for limiting the number of Worlds Bids Events. For example, the Sanctioning Committee’s 2012-2013 approval process rules state that “the goal is to make Worlds qualifying events as accessible as possible for all star programs *without diminishing a qualifying event’s prestige by over saturating any given market.*”¹²⁵ Plaintiffs’ experts fail to acknowledge that USASF’s rules are consistent with procompetitive behavior. (And, even if in hindsight, Plaintiffs’ experts would have preferred that USASF established different rules, the fact that USASF could have adopted different rules in 2012 does not imply the presence of a conspiracy with Varsity.)

69. Plaintiffs’ experts also take issue with the fact that “[p]riority for Tier 1 cheer membership is given to event producers based on their seniority as USASF members.”¹²⁶ This allegation, similarly, does not involve actions taken by USASF during the alleged class period. Indeed, the rules that govern the process of approving Worlds Bid Events have been in place since at least 2012—four years prior to the start of the alleged class period.¹²⁷ Plaintiffs’ experts do not even attempt to conduct any analysis to assess whether the challenged rules had any effect on the approval of Worlds Bid Events during the alleged class period.
70. Moreover, Plaintiffs’ experts’ hindsight-based claims ignore critical context and potential procompetitive reasons for USASF to implement the rules it did. They ignore, for example, that at the time USASF implemented the rules at issue, Varsity did not own a majority of Tier 1 event producers,¹²⁸ and that USASF’s policies provide an objective standard through which to determine which events are approved, in the event that multiple events qualify to fill a single spot. Plaintiffs’ experts also similarly fail to consider, for example, whether those rules were necessary at the time to foster adoption of USASF’s policies, incentivize membership, or encourage investment by event producers. As noted above, sanctioning organizations need to structure rules in such a way that participants are sufficiently incentivized to adhere to them.¹²⁹ It is economically reasonable for a company or organization to incentivize early investment by offering discounts, free items, or future rewards. Without such analysis, Plaintiffs’ experts cannot reliably claim that alternative rules would have been better for competition—let alone assert that USASF’s existing rules demonstrate anticompetitive behavior.

¹²⁵ VAR00319008-10, at 08 (*emphasis added*).

¹²⁶ Heeb Report, ¶¶ 207-208; Netz Report, pp. 17, 71.

¹²⁷ A document that outlines the “Sanctioning Committee’s Approval Process & Criteria for Tier 1 and Tier 2 Event Producers and & [sic] Worlds Bid Eligibility” for the 2012-2013 season, suggests that “[p]riority will be given to members based upon their seniority as USASF member event producers” (VAR00319008-10, at 08), and that “[a]nother goal is to recognize the contribution made by the early USASF supporters whose financial support made the Worlds possible initially.” (*Id.*, at 10).

¹²⁸ Varsity did not obtain the majority of USASF’s Sanctioning Committee, through its acquisitions, until 2016. See e.g., Peterson Dep., March 9, 2022, 191:20-192:1; Chadwick Dep., 163:6-9.

¹²⁹ See Section III.C.

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3. USASF’s “125 Team” Threshold for Worlds Bid Events Did Not Materially Advantage Varsity

71. Plaintiffs’ experts take particular issue with one of USASF’s “new” sanctioning rules, which requires all event producers to “have a minimum of 125 All Star ‘cheer’ teams participating at the same prior year’s competition to qualify” as a Tier 1, beginning in the 2016-2017 All Star season,¹³⁰ with a 1-year probationary period for event producers that fail to meet that threshold.¹³¹ However, as Dr. Netz implicitly acknowledges,¹³² the 125-rule requirement was not a new rule introduced for the 2016-2017 season—instead, USASF simply updated its existing rules to remove an exception allowing event producers that joined USASF prior to the 2007-2008 season to continue awarding Worlds Bids with fewer than 125 (but at least 100) teams attending their events.¹³³ The updated requirement was adopted and announced by December 2014, prior to the start of the alleged class period.¹³⁴
72. Plaintiffs’ experts claim that USASF, in coordination with Varsity, “established the new 125 team threshold rule and created the probationary period.”¹³⁵ They further claim that the 125-team rule “provided the mechanism through which Varsity targeted specific event producers.”¹³⁶ Their claims appear to be based on Dr. Netz’s speculation that “changes in the rules forced an increased number of independent event producers into a probation period, *most likely* the smaller event producers,”¹³⁷ and that “Varsity would *likely* be awarded the forfeited Worlds bids because of its USASF membership seniority.”¹³⁸ Similarly, Dr. Heeb speculates that the aim of such a strategy was to cause Varsity’s rivals to fail to meet the minimum team threshold, and that the “released World bids would be available to be obtained by a new event producer, which could include Varsity.”¹³⁹

¹³⁰ See, e.g., USASF_00019474-7, at 74, describing the rule.

¹³¹ See, e.g., Netz Report, p. 71.

¹³² Netz Report, p. 72 (“Prior to this rule being established, a Tier 1 event producer with a USASF membership date *during or before the 2007-08 season* only had to meet a 100-team minimum to continue offering Worlds bids.”) (*emphasis added*).

¹³³ See, e.g., USASF_00030547-8, at 47 (August 2008 Board of Directors minutes approving the exception: “Tier 1 requirements for current Tier 1 members (those approved in 2007-08 or earlier) are reduced from 125 to 100 all star cheer teams. All new Tier 1 applicants must meet the 125 all star team standard.”).

¹³⁴ VAR00348574-5; VAR00348595-600. I understand that, at the time that this rule was announced (and presumably voted on), Varsity did not hold the majority of votes on the Sanctioning Committee. See my backup materials. Specifically, based on USASF_00085173 and communications between my team and Varsity counsel, I find that Varsity owned 16 out of 35 Tier 1 producers during the 2014-2015 season.

¹³⁵ Netz Report, pp. 72-73.

¹³⁶ Netz Report, p. 72. See also Heeb Report, ¶ 214 (“Taking advantage of this rule and its market power, Varsity has engaged in an anticompetitive strategy of locating its own events near a rival’s bid event in an effort to attract teams to participate in the Varsity bid event and discourage teams from participating in the rival’s bid competition.”).

¹³⁷ Netz Report, p. 73 (*emphasis added*).

¹³⁸ Netz Report, p. 74 (*emphasis added*).

¹³⁹ Heeb Report, ¶ 214.

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However, Plaintiffs’ experts provide no factual analysis supporting their speculation that the rule benefited Varsity at the expense of its rivals.

73. In fact, the available data contradict Plaintiffs’ experts’ speculations. The data on Worlds Bid Events show that the implementation of the 125-team threshold did not cause any material change in event producers’ participation that favored Varsity. Only two event producers lost their Worlds Bids between the 2015-2016 and 2019-2020 All Star seasons after the rule went into effect.¹⁴⁰ I understand that both of these events—Varsity-owned Orlando Magic’s “Showdown in O’town” and AmeriCheer’s “Buckeye Open National Championships”—were Tier 2 producers during the 2015-2016 season,¹⁴¹ at which time USASF eliminated the Tier 2 category.¹⁴² Since both events had fewer than 125 teams compete in both the 2014-2015 and 2015-2016 seasons, they failed to qualify as Tier 1 event producers for the 2016-2017 season and lost their ability to award Worlds Bids.¹⁴³ In the place of Orlando Magic and AmeriCheer, two new event producers qualified as Tier 1 for the 2016-2017 season: Varsity-owned Encore Championships, and non-Varsity Greater Midwest Cheer Expo. In other words, when the 125-team threshold went into effect, Varsity lost one Worlds Bid Event and gained one Worlds Bid Event, and a non-Varsity event producer lost one Worlds Bid Event and a different non-Varsity event producer gained one Worlds Bid event. As such, Plaintiffs’ experts provide just speculation—the evidence shows no material impact from the rule change.
74. Dr. Netz also claims that the probationary period “allows Varsity to both identify possible acquisition targets and/or sabotage those events that were struggling to meet the minimums.”¹⁴⁴ Dr. Netz ignores the obvious procompetitive benefits of the addition of a probationary year relative to not having such an option for event producers (*i.e.*, relative to the situation in which the event producer loses its bid immediately after the number of teams falls below 125). The probationary period gives event producers a chance to maintain their bids by attracting 125 teams or more in the following year. As such, the event producer does not risk its investment on the off chance of having a single bad year. Because Dr. Netz does not specify any counterfactual rule, she provides no reliable analysis showing that the probationary period harmed competition—let alone showing that USASF engaged in anticompetitive behavior in coordination with Varsity.

¹⁴⁰ See my backup materials. The data available to me cover the 2015-2016 through 2019-2020 All Star seasons.

¹⁴¹ See, *e.g.*, USASF_00019474-7, at 74 (noting that Orlando Magic had been a Tier 2 producer); USASF_00086125 (showing that Orlando Magic and AmeriCheer both could only award Partial Paid Bids to Worlds for the 2015-2016 season).

¹⁴² *Peterson Dep.*, March 9, 2022, 158:7-9.

¹⁴³ See, *e.g.*, USASF_00019474-7, at 74 (noting that Orlando Magic’s event was attended by 122 teams in the 2014-2015 season and 95 teams in the 2015-2016 season); USASF_00019528-31, at 28; USASF_00020057-8, at 57 (“Americheer is not eligible to award 2017 **Cheer** [sic] Worlds bids since Americheer was on probation during the 15-16 season and not making the 125 team minimum requirement for the 16-17 season.”).

¹⁴⁴ *Netz Report*, pp. 72-73. See also *id.* (“This information allows Varsity to selectively target the event promoters and events that are most likely to result in Varsity obtaining additional Worlds bids.”).

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4. Plaintiffs’ Experts’ Claims that Guideline 3.B Restricts Entry and Competition Is Unfounded

75. USASF’s Sanctioning Committee Guideline 3.B provides that “Tier 1 and Tier 2 events will be protected, within a four week window, either side of the current bid giving event for a 200 mile radius” and “protected for a 500 mile radius from other bid giving events on the same weekend.”¹⁴⁵ Dr. Heeb claims that the effect of such rules is to “restrict new entry and competition among events,” presumably to the benefit of Varsity.¹⁴⁶
76. Guideline 3.B has been in place since at least the 2012-2013 season.¹⁴⁷ Plaintiffs’ experts do not provide evidence that, during the alleged class period, USASF implemented or enforced Guideline 3.B in a way that favored Varsity. In addition, Guideline 3.B sets forth location and date requirements for all Worlds Bid Events, not only Varsity’s. As such, to the extent that it protects Varsity’s events from competition, it provides a similar protection to Varsity’s competitors. Because Plaintiffs’ experts do not even claim to provide any reliable analysis showing that Guideline 3.B was implemented for the benefit of Varsity, their arguments do not support any anticompetitive conduct by USASF.
77. Critically, it is easy to see that there are legitimate, procompetitive reasons for USASF to spread out Worlds Bid Events over time and throughout the country. As in any sport, the collective efforts of many event producers contribute to enhance the popularity of the sport by appropriately selecting times and locations that would be attractive to both participants and spectators. This objective inherently involves a significant degree of cooperation among the sanctioning organization and the event producers. In fact, spreading out events is standard for major leagues in the United States, which typically have rules that protect teams from local competition¹⁴⁸ in a “home territory,” such as a metropolitan area.¹⁴⁹ As such, teams cannot have matches—or even broadcast games—within another team’s home area without first obtaining permission.¹⁵⁰ Moreover, to have a real “World” championship event, it makes economic sense for USASF to avoid concentrating bid-awarding

¹⁴⁵ VAR00319008-10, at 09.

¹⁴⁶ *Heeb Report*, ¶¶ 205-206. *See also*, *Netz Report*, p. 71 (“Event producer members of the USASF need permission from the USASF Sanctioning Committee to either move an event more than 200 miles or change the date if it is located too close to an existing member’s bid event that had seniority. In other words, event promoters with earlier USASF membership dates are afforded protections for their events from possible new events being hosted in a similar area or date range.”).

¹⁴⁷ VAR00319008-10. Other documents indicate that Guideline 3.B was actually in place, in some form, even earlier, at least as early as 2010 (*see, e.g.*, USASF_00090186-8, at 86 (discussing the 200-mile rule in effect in 2010)).

¹⁴⁸ I use the term “competition” here to discuss how teams compete, and not as “competition” within a marketplace, as in antitrust economics.

¹⁴⁹ *Noll* (2003), p. 538.

¹⁵⁰ *Noll* (2003) notes that when approval was given, it required substantial compensation: “For example, the New York Mets baseball team paid the New York Yankees \$10,000,000 for the right to share New York City. Similar deals were arranged to enable the California Angels to play in Los Angeles and the Oakland Athletics (A’s) to play in the San Francisco–Oakland metropolitan area.” *Id.*

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events in a few areas and “oversaturating” those regions while leaving large areas of the country unrepresented.¹⁵¹ Guideline 3.B is consistent with USASF’s mission to spread All Star Cheer through the country, fostering access to All Star Cheer events in less densely populated areas rather than having event producers focus their efforts in the most profitable metropolitan areas.

78. Shockingly, another of Plaintiffs’ experts, Mr. Aronoff, proposes very similar rules to Guideline 3.B in his recommendations for relief (“Varsity cannot schedule a bid earning event in the same location or at the same time as any previously scheduled event”)—but his proposed rules are targeted specifically at Varsity. In other words, taken in sum, Plaintiffs’ experts consider rules that limit event producers from hosting Worlds Bid Events in close geographic or temporal proximity to other Worlds Bid Events anticompetitive, unless they specifically target Varsity. It is not the role of a sanctioning organization to adopt the discriminatory approach Plaintiffs’ experts propose. And, most importantly, it defies economic logic that the absence of such a discriminatory approach demonstrates a conspiracy between USASF and Varsity.

5. Plaintiffs’ Experts’ Claims that Varsity Was Able to “Undercut” Events Hosted by Rivals with “Aid” from USASF Do Not Survive Scrutiny

79. Dr. Netz also speculates that Varsity, with “the aid of information provided by the USASF,” “undercut events hosted by rival event producers.”¹⁵² Specifically, Dr. Netz claims that Varsity obtained from USASF information on which event producers were in “probation” (as a result of not meeting the 125-team minimum) and information on the World bids allocated to rival event producers.¹⁵³ However, I understand, and record evidence supports, that this type of information

¹⁵¹ See, e.g., *Peterson Dep.*, March 9, 2022, 131:16-132:2, discussing Guideline 3.B (“Q. What is the purpose of this guideline? A. It’s in place to protect a specific region of the country that may be oversaturated with Worlds bid-qualifying events—and targeting—Yeah. So that they’re not, you know, targeting the same customers. And, once again, it’s to protect the number of bids being awarded versus the number of teams that are out there to receive those bids.”) See also, *Chadwick Dep.*, 59:20-60:3 (“So the intent was to try and spread out so you wouldn’t have all the – all the events only being from Atlanta, which would disadvantage teams from Wyoming or wherever, because it would be more expensive for them to compete than it was elsewhere. So there was an attempt to try and create a – a level playing field based on geography and on the number of teams that were there, and that the USASF rules would be followed. And I think that was the basis for the bid allocation system.”).

¹⁵² *Netz Report*, p. 73. See also, *id.*, p. 4.

¹⁵³ *Netz Report*, p. 73.

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was shared with Tier 1 event producers at least annually,¹⁵⁴ and was available to all USASF event producer members upon request.¹⁵⁵

80. Once one considers that the information Dr. Netz refers to was largely available to all event producers, Dr. Netz’s lengthy discussion simply boils down to the manner in which Varsity—*by itself*—competed with its rivals.¹⁵⁶ It does not support any reliable claim of conspiracy with USASF. And, again, the empirical evidence shows that USASF, on balance, did not have any incremental effect on Varsity’s control of Worlds Bid events.¹⁵⁷

¹⁵⁴ See, *Peterson Dep., Mach 9, 2022*, 83:10-13 (“I do send this list to event producers and also our working staff and those registration specialists that manage the registrations for Worlds so everybody is aware.”) See also, e.g., USASF_00082519 (March 2013 email from Mr. Peterson to “Tier 1 & 2 Applicants,” attaching the list of approved Worlds Bid Events and identifying event producers on probation (USASF_00082520)); USASF_00084032-5 (February 2014 email from Mr. Peterson to Sanctioning Committee, soliciting votes for Tier 1 and 2 approvals and attaching spreadsheet identifying event producers on probation (USASF_00084036)); USASF_00020212-3 (Forwarded February 2016 email from Mr. Peterson to Sanctioning Committee members, attaching a spreadsheet identifying event producers on probation (USASF_00020214)); USASF_00013105-6 (February 2017 email from Mr. Peterson to Sanctioning Committee, attaching the list of approved Worlds Bid Events and identifying event producers on probation (USASF_00013107)); USASF_00013111 (February 2018 email from Mr. Peterson to Cheer Sanctioning Committee members, attaching a list of applicants for Tier 1 spots (USASF_00013112) and noting that “all 42 2017-2018 Tier 1 members will be returning” if Aloha Productions “meet[s] the minimum number of teams at their upcoming event”).

¹⁵⁵ See, e.g., USASF_00011972-5 (email in which Mr. Peterson provided Halliburton (Tier 3 producer) with the “Tier 1 waiting list” ahead of Halliburton and the names of event producers on probation); USASF_00087504 (email to Team Champion, attaching a spreadsheet summarizing Worlds Bid Events and probation status (USASF_00087505)); USASF_00085645-6 (email from Steve Peterson to an event producer, re-attaching a list of Worlds Bid Events indicating which producers are on probation (USASF_00085646)). Mr. Peterson confirmed that he provided event producers with details regarding which Tier 1 event producers were on probation when asked. (Interview with Steve Peterson, September 20, 2022.)

¹⁵⁶ See *Netz Report*, § V.B.1.b.

¹⁵⁷ See my backup materials. In particular, Dr. Netz claims that Varsity acquired two Worlds Bid Events after event producers went on probation in early 2020 (*Netz Report*, p. 84). USASF ultimately extended the probationary period for those two events (American Spirit Championships and CheerTech), in light of the effect the COVID-19 pandemic may have had on competition attendance. See, USASF_00012988; *The Cheerleading Worlds, 2022-2023 Bid Events Schedule*, <https://thecheerleadingworlds.net/bid-events-schedule/>, showing that both American Spirit Championships and Cheer Tech are still hosting Worlds Bid Events in the 2022-2023 season. I understand that USASF subsequently approved two new non-Varsity Worlds Bid Events in addition to the two approved Varsity events (bringing the total number of Worlds Bid Events to 46). Thus, after accounting for the full circumstances, this example does not support claims that USASF incrementally advantaged Varsity.

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C. Plaintiffs’ Experts’ Claims that USASF Prohibited Members from Participating in “Rivals’ Events” Are Unfounded and Do Not Support Plaintiffs’ Allegations of a Conspiracy

81. Dr. Netz incorrectly claims that “Varsity and the USASF forbid its member athletes, judges, gyms, and event producers from attending and hosting events that could undermine Varsity’s dominance.”¹⁵⁸ More specifically, she claims that “USASF policy precludes any USASF member athletes, coaches, or judges from attending any year-end competitions that purport to either be ‘World/International’ or ‘Worlds’ competitions unless they are run by either Varsity or ICU.”¹⁵⁹
82. Critically, Dr. Netz misrepresents USASF’s policies. Dr. Netz incorrectly claims that USASF policy precludes member “*athletes, coaches, or judges*” from attending Worlds/International competitions unless they are run “by either Varsity or ICU.”¹⁶⁰ First, based on testimony from USASF, I understand that at all times relevant to this case, such a limitation did not apply to member athletes, coaches, or judges.^{161, 162} During this period, USASF has only had a limitation for *event producers* that prohibits them from affiliating with another event with “World” or “Worlds” in the name other than the USASF or ICU Worlds.¹⁶³ As discussed below, such a rule makes economic sense. Second, there is no

¹⁵⁸ Netz Report, p. 85.

¹⁵⁹ Netz Report, p. 85.

¹⁶⁰ Netz Report, p. 85 (*emphasis added*). I understand that the letter cited by Dr. Netz, from October 2011, was never authenticated as actually being written or distributed by Mr. Chadwick and/or Mr. Peterson and, as shown in deposition testimony and USASF’s Company Member Agreement (referenced above), it does not accurately reflect USASF’s policy. See Netz Report, n. 337 (referencing USASF/IASF: Worlds Policy Update, Spirit Post, <https://spiritpost.com/2011/10/usasfiasf-worlds-policy-update/>).

¹⁶¹ See Deposition of Amy Clark March 31, 2022 (hereinafter, *Clark Dep.*), 45:25-46:2 (“The USASF doesn’t take any disciplinary action against anybody that attends a non-sanctioned event.”); 255:16-19 (“You can go to an unsanctioned event -- if you are a gym, you can go to one of those events. We don’t stop you from going to those events.”); and 258:11-17 (“So, again, we did not police our members, as you say, saying that they could only attend sanctioned events. That’s -- that’s not -- so -- so our members, our gym owners, who owned programs or clubs and their coaches could take their teams and athletes to any event they wanted, whether it was sanctioned or unsanctioned.”).

¹⁶² Dr. Netz also claims, incorrectly, that there is evidence that the policy she describes was enforced (against a gym/team). (Netz Report, p. 86, n. 341). However, Dr. Netz appears to misrepresent the evidence. Based on an email chain, she discusses “repercussions for a team that attended a 2017 event in Japan which violated the USASF policy regarding ‘world’ events.” (Netz Report, n. 341 (*emphasis added*)). In the document cited, however, USA Cheer (not USASF) requested that USASF disqualify two owners of a gym from attending USASF events as coaches *as a result of a different violation*. I understand that USA Cheer is the National Governing Body appointed by the U.S. Olympic Committee. Under the Amateur Sports Act, USA Cheer is the exclusive body who can send teams to compete internationally on behalf of the USA. As discussed in the email chain, the team that attended the 2017 event in Japan held itself as representing the USA without authorization from USA Cheer (the email chain says nothing about “world” events). In addition, USA Cheer did not request that the athletes in the team to be impacted and the document does not indicate how USASF responded to USA Cheer’s request. See USASF_00039898-901.

¹⁶³ I understand that each year, event producers (including Varsity) voluntarily enter into one-year membership agreements with USASF. During the term of their membership, they agree (i) not to

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mention of Varsity in any of the documents referenced by Dr. Netz. And Dr. Netz’s report provides no support for her claim that such rules were the result of a conspiracy between USASF and Varsity.¹⁶⁴

83. Dr. Netz vaguely claims that that USASF rules prevent members from participating in “rivals’ events” that could “undermine Varsity’s dominance.”¹⁶⁵ But the rules she purports to reference *do not* prevent members (such as athletes and gyms) from attending Varsity’s rival events or otherwise discriminate against Varsity’s rival event producers offering USASF-sanctioned events, which is one of Plaintiffs’ experts’ main arguments in this case. At most, the purported rules equally prevent *both* Varsity and its rival event producers from associating themselves with non-sanctioned “Worlds” competitions. As such, the referenced rules do not support a claim that USASF discriminates against rival event producers in favor of Varsity’s events, as Dr. Netz suggests.
84. Unlike Dr. Netz, Dr. Heeb seems to acknowledge that USASF rules only apply to event producers.¹⁶⁶ But like Dr. Netz, Dr. Heeb claims that such rules are the result of a conspiracy between Varsity and USASF to prohibit “gyms from competing in rivals’ events” and concludes that the rules are “anticompetitive.”¹⁶⁷ Plaintiffs’ experts’ reports provide no support for their claim that Varsity and USASF conspired to create such rules. In addition, they ignore basic economics when they assume without any reliable analysis that a *vertical restraint*, such as the questioned USASF’s rules, must be

associate with another “World” event or characterize teams as “world champion” based on the results of any other event; and (ii) with respect to Levels 5 and 6 (later Levels 6 and 7), not to have a multi-brand event (*i.e.*, an event hosted by three or more USASF member event producers) on the same weekend as Worlds. I understand that these agreements do not prevent event producers from having single-brand events on Worlds’ weekends; from having events that are “championships” but do not use the word “World(s);” or from having lower-level multi-brand events on Worlds’ weekends. *See, e.g.*, 2017-2018 USASF Company Member Agreement, USASF_00011695-711, at 696-8 (§§ 7, 19.a, and 19.c). *See also*, USASF_00011692-3.

¹⁶⁴ *See Netz Report*, p. 85 (“Varsity and USASF conspired to prohibit USASF members from participating in rivals’ events.”). I also note that Dr. Netz’s referenced letter on page 85 appears to be from October 2011, many years before the alleged class period. Although such a letter does not reflect USASF policy, as discussed below, the referenced rules were indeed in place before the alleged class period. *See, e.g.*, , USASF_00019495-527 (2015-2016 USASF Company Member Agreement), at 516-20 (§ 7); USASF_00081167-83 (2012-2013 USAF Company Member Agreement), § 6.

¹⁶⁵ *Netz Report*, p. 85. Dr. Netz’s incorrect statements are also echoed by Dr. Maki. *See Maki Report*, ¶ 65 (“As discussed in the *Netz Report*, Varsity and USASF conspired to prohibit members from partnering with rival event promoters.”).

¹⁶⁶ *Heeb Report*, ¶ 215 (“The USASF Company Member Agreement, which applies to the Tier 3 and 4 members, states that the event producer (the “Company”) will not ‘produce, or recruit teams for a cheerleading or dance ‘World’ championship event, or participate in, or sponsor a cheerleading or dance ‘World’ championship event conducted by a third party.’”).

¹⁶⁷ *Heeb Report*, ¶ 215. *See also, Netz Report*, p. 53 (“Varsity, in coordination with the USASF, also restricts competing event producers’ access to All Star gyms in several ways, including prohibiting gyms and school teams from competing in rivals’ events (discussed further in Section V.B.2) and from partnering with competing event producers (discussed further in Section V.B.3).”); and pp. 86-87 (“There are no counterbalancing procompetitive benefits to these policies.”).

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“anticompetitive” (and to the benefit of Varsity).¹⁶⁸ Depending on the type of restraint and the marketplace environment, vertical restraints can be procompetitive, anticompetitive, or they can have ambiguous effects.¹⁶⁹ As noted above, the referenced USASF rules do not prevent gyms from competing at Varsity’s rival events, but rather prohibit both Varsity and competing event producers from associating themselves with non-sanctioned events that claim to be “World” championships.

85. Moreover, based on an incorrect understanding of USASF’s rules, and without any reliable analysis, Dr. Netz claims that “[t]here are no counterbalancing procompetitive benefits to these policies.”¹⁷⁰ Dr. Netz ignores economic literature that shows that, although certain leagues allow for multiple memberships, “[l]eagues normally require exclusive membership.”¹⁷¹ The main reason is that membership to multiple championships can reduce the value of each championship.¹⁷²
86. In the case of USASF’s policy, the obvious procompetitive rationale is to protect the investment in Worlds, and associated trademark, and to avoid confusion among USASF members as to whether another event with “Worlds” in the name is actually the USASF’s Worlds championship. Consistent with many sports, a sanctioning organization that offers a world championship does not want its members to call some other tournament the world championship. That would allow other organizers to *free ride* on the investments and reputation of the sanctioning organization,¹⁷³ which, in turn, would reduce the incentive for the organization to invest in such an event—if it makes the investment at all. As such, it makes economic sense—and leads to procompetitive economic efficiencies—for the organization to make the investment but at the same time agree with participating members that those members would not associate themselves with a different event that uses the same name. As noted by Professor Noll:¹⁷⁴

The strongest governing bodies are those that control valuable events, such as the Olympics and the World Cup, and they are likely to be very protective of these events because their ability to carry on their broader missions depends on

¹⁶⁸ In economics, contractual restrictions on nonprice terms are called vertical restraints. Vertical restrains are commonly used by companies to solve problems in distribution, in particular, free riding problems. For example, “manufacturers commonly restrict their distributors by limiting their sales territories, setting inventory requirements, and, where legal, setting the minimum retail price they charge.” See Carlton, Dennis W., and Jeffrey M. Perloff, *Modern Industrial Organization*, 4th Ed., Pearson (2005) (hereinafter, *Carlton and Perloff* (2005)), pp. 395, 415.

¹⁶⁹ See *Carlton and Perloff* (2005), pp. 425-431.

¹⁷⁰ *Netz Report*, pp. 86-87.

¹⁷¹ *Noll* (2003), p. 536.

¹⁷² Professor Noll also mentions the possibility of teams reducing the quality of play in one championship to focus their energies on another championship in which they expect better chances, or the potential for creating large gaps in quality and competitiveness (and revenues) between teams that participate in multiple leagues and those who can only participate in one league. See *Noll* (2003), p. 536.

¹⁷³ In economics, free riding refers to an agent or firm that benefits from the actions of another without paying for it, which can lead to perverse (inefficient) incentives and ultimately harm consumers. See, e.g., *Carlton and Perloff* (2005), pp. 414, 418-424, 602-603.

¹⁷⁴ *Noll* (2003), p. 543.

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maximizing income from them. It is not realistic to expect that these bodies will take any action that undermines the value of these important sources of income. An example is the attack of the International Olympic Committee on other organizations that use the word ‘Olympics’.

D. Plaintiffs’ Experts’ Claims that USASF Prohibited Members from Partnering with Rival Sanctioning Bodies Are Unfounded and Do Not Support Plaintiffs’ Allegations of Conspiracy

87. Dr. Netz makes similarly inaccurate and nonsensical claims with respect to USASF members’ ability to join rival sanctioning bodies. She claims that USASF “conspired” with Varsity to “forbid its members from partnering with rival sanctioning bodies or hosting events that could undermine Varsity’s dominance.”¹⁷⁵ (She provides no supporting evidence for her statement.) She also claims that “[t]hese policies are designed to foreclose rival event producers and All Star gyms from hosting events.”¹⁷⁶
88. *First*, Dr. Netz’s claim is factually incorrect. As discussed above, USASF does not prevent gyms, athletes, and coaches from joining non-sanctioned events or rival sanctioning organizations.¹⁷⁷ *Second*, Dr. Netz provides no support for her claim that any of the rules she discusses are the result of a conspiracy between USASF and Varsity.¹⁷⁸ *Third*, Dr. Netz’s economic logic appears to be backwards: In principle, restricting entry by gyms and their athletes (*i.e.*, Varsity’s customers) to All Star events, by not allowing them to join rival sanctioning bodies, affects both Varsity and its rival event producers alike. Dr. Netz provides no reliable analysis that even attempts to show that restricting entry by gyms and their athletes, or restricting the ability of *all* event producers from hosting non-sanctioned events, ultimately benefits Varsity at the expense of rival event producers. To make such a claim, the liability expert would have to provide empirical support, of which Dr. Netz provides none.
89. USASF rules do place certain restrictions on *event producers* to host non-sanctioned *All Star* cheer or dance events.¹⁷⁹ Dr. Netz simply claims that “there are no counterbalancing procompetitive benefits

¹⁷⁵ Netz Report, p. 87.

¹⁷⁶ Netz Report, p. 88.

¹⁷⁷ See ¶ 83. Dr. Netz makes the unsupported claim that “Athletes and gyms that attend any single USASF competition must be members of the USASF; as such, they are bound by the USASF membership agreement that precludes them from hosting any non-USASF events.” (Netz Report, p. 88). The document cited by Dr. Netz only states that “Athletes participating at USASF sanctioned events must be registered members of the USASF for the current season.” (*Id.*, n. 347). As such, it does not show that gyms and athletes cannot join or host non-USASF events.

¹⁷⁸ Dr. Netz only claims to provide evidence that Varsity considered the potential for entry by rival event producers and All Star gyms hosting events as threats. (Netz Report, p. 88). But she provides no evidence showing that Varsity and USASF coordinated to prevent those threats to Varsity.

¹⁷⁹ See, e.g., Deposition of Ali Stangle, March 30, 2022 (hereinafter *Stangle Dep.*), 75:24-76:1 (“Q. And if the event producer comes on as a USASF member, can they still have [recreational] competitions? A. Yes.”).

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to these policies.”¹⁸⁰ However, she conducts no reliable analysis of the potential procompetitive reasons for USASF to limit event producers from hosting non-sanctioned events. These include, for example, the potential for *free riding* on USASF’s investments and reputation. Over the years, USASF has done abundant work to develop detailed safety rules and other requirements for sanctioned events.¹⁸¹ Because athletes and their parents may not readily ascertain whether an event is sanctioned by USASF or not, an event producer that hosts sanctioned and non-sanctioned events (over which USASF has no control) could free ride on USASF’s reputation of ensuring safe and consistent events for its members without providing the same conditions when hosting non-sanctioned events. It has long been understood that sanctioning organizations need to protect themselves from such a behavior,¹⁸² and the economics literature shows that such a behavior could be detrimental to all USASF members, including event producers, gyms, coaches, and athletes.¹⁸³ As

¹⁸⁰ *Netz Report*, p. 89.

¹⁸¹ For example, the USASF’s Cheer Event Sanctioning Standards provide for the minimum standards that apply to all event producers to be USASF-sanctioned. These standards include many rules, such as the need to have EMT or athletic trainer present, a documented emergency plan, background checks for employees, liability insurance, and safety judges. They also include rules with respect to the warm-up and event area conditions, including size, carpet/foams, ceiling clearance, and cleaning methods. *See, e.g.*, USASF_00002943-4 (USASF Cheer Event Sanctioning Standards 2020-2021). In addition, the USASF’s Cheer Rules contain lengthy safety rules related to tumbling, stunts, pyramids, dismounts, and tosses—for seven different levels of competition. They also contain Athletic Performance Standards, which include uniform rules meant to avoid, for example, “risqué, sexually provocative or lingerie looking inspired uniform.” *See, e.g.*, USASF_00022755-98 (2019-2020 USASF Cheer Rules). *See also*, Deposition of Lynn Singer, March 2, 2022 (hereinafter, *Singer Dep.*) 141:24-142:7 (“The sanctioned competitions or sanctioning a competition is really all about safety. So it’s the type of floors that are used, the ceiling height of the performance floors, the type of mats that are used in warm-up room that they have, that the teams have sufficient time to warm up for events. So there’s a -- there’s a list of items that sanctioned competitions agree to follow, and it’s all pointed mostly at athlete safety.”); 169:16-22 (“I think part of it is consistency so that as gyms and studios go to competitions across the country, that they can expect a similar -- the -- the flooring and the length of the competition day, and the -- who’s allowed in the warm-up rooms, and things like that. It’s consistency across the board.”); and 170:3-10 (“For a specific example, the sanctioning guidelines specify the hours of the day that you can hold a competition. So it can’t start earlier than 7:00 in the morning and can’t go later than 10:00 or 11:00, whatever time it is, at night. So that previously there were events that would run on and on till -- teams would still be competing at 1:00 or 2:00 in the morning.”).

¹⁸² *See Weistart* (1977), p. 707, (referring to the need to suspend players for certain infractions): (“It would be a rather startling notion if the antitrust laws meant that a business operation such as a league could not protect itself against actions of participants which might seriously injure, if not destroy, the enterprise.”).

¹⁸³ The economics literature provides abundant examples of such free riding in the context of manufacturing companies and their distributors or retailers. *See, e.g.*, *Carlton and Perloff* (2005), pp. 418-424, for many situations in which free riding occurs. For example, “free riding occurs when the *reputation of the product*, which the dealer can affect, influences the overall demand for the product. For example, imagine a chain of independently owned food shops all selling under the same brand name (say, McDonald’s, Burger King, or Wendy’s). The brand name carries a certain reputation that attracts buyers. If one shop decides to chisel on quality and to produce a lower quality than the other shops, the brand’s reputation declines and all distributors suffer.” *Id.*, p. 421.

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such, it makes economic sense that USASF would have such rules—which, by protecting and incentivizing USASF investments in the Worlds championship, are procompetitive.

E. Plaintiffs’ Experts’ Claims Regarding USASF’s Insurance Requirement Do Not Support Plaintiffs’ Allegations of Conspiracy

90. Dr. Netz claims that USASF’s policy of requiring its members to carry insurance, and the insurance company’s (K&K) practice of charging higher premiums for teams that attend non-sanctioned events, create an “effective barrier for potential new entrants.”¹⁸⁴
91. Notably, Plaintiffs’ experts do not claim that USASF’s insurance requirements are the result of coordinated behavior between USASF and Varsity.¹⁸⁵ Nor do they claim that USASF anticompetitively erects barriers to entry through the insurance requirements—Dr. Netz simply claims that insurance costs, *which are present in virtually every industry*, create barriers to entry.¹⁸⁶
92. To the extent that Dr. Netz claims that USASF’s practice of requiring insurance is anticompetitive (and/or conspiratorial), she does not provide any reliable economic analysis to support her claim. For example, Dr. Netz provides no evidence of anticompetitive agreements between the insurer, USASF, and/or Varsity. She does not even claim that the referenced insurer does not act in an independent, profit-maximizing manner. Nor does Dr. Netz analyze whether the insurer expects costs from claims to be higher when athletes attend non-sanctioned events—which do not follow the USASF extensive safety rules discussed above. Of course, it is procompetitive for USASF to ensure All Star events are safer, which would be reflected in lower insurance rates and would benefit Varsity, non-Varsity event producers, gyms, and *athletes*.
93. Finally, Dr. Netz concedes that “USASF does not mandate that its members obtain insurance from K&K.”¹⁸⁷ Deposition testimony from Sarah Minzghor, a direct class representative, shows that (i) she

¹⁸⁴ Netz Report, p. 53. Dr. Netz incorrectly cites to USASF’s company member agreements for the proposition that USASF requires its members to maintain comprehensive general liability and automotive insurance. Id., n. 208. Such requirements are for event producers. For gyms/programs, the requirements are described in, e.g., USASF_00042049-52, at 49 (“A program must provide proof of (and maintain) current commercial general liability insurance that includes, at a minimum, participant legal liability and participant excess accident medical insurance.”).

¹⁸⁵ I also note that insurance requirements for gym owners have been included in USASF’s rules since at least 2013-2014. (See, e.g., USASF Professional Responsibility Code V4.0, 2013-2014 (USASF_00027885-91)).

¹⁸⁶ Dr. Netz’s only discussion related to USASF’s insurance rules appears to take documents out of context. Dr. Netz refers to a statement from Mr. Chadwick, which she interprets to mean that the USASF insurance requirement for members was used as a “stick” to combat non-sanctioned events. (Netz Report, p. 54, n. 214). The cited document refers to “athlete insurance” (USASF_00028264-71, at 65 and 69), which I understand to be one of the benefits that USASF provides to its athlete members, that is, \$50,000 in excess accident medical insurance and \$2 million in catastrophic accident insurance. Of course, this coverage provided by USASF only applies to USASF-sanctioned competitions. See, e.g., USASF_00028041-2, at 41; Chadwick Dep., 345:17-20 (“...I think our goal was trying to get every All Star program to register athletes and let them become members and get the advantage of the insurance and everything else.”).

¹⁸⁷ Netz Report, p. 53.

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understands that it is important for gyms to have insurance; (ii) she had no problems switching between K&K and other insurers; and (iii) she did not perceive that USASF’s insurance requirements were based on any favoritism towards Varsity.¹⁸⁸ As such, the evidence does not support Dr. Netz’s claim that USASF’s insurance requirements raise anticompetitive barriers to entry for Varsity’s rival event producers.

F. Plaintiffs’ Experts’ Claims that Other USASF Competition and Apparel Rules Advantage Varsity Do Not Support Plaintiffs’ Allegations of Conspiracy

94. Dr. Netz claims that USASF establishes apparel rules with “Varsity personnel input” and provides Varsity “early access to any changes in the rules” relative to other apparel suppliers.¹⁸⁹ Dr. Netz further claims that such a behavior “advantages Varsity and presents a barrier to entry for rival apparel manufacturers.”¹⁹⁰
95. Dr. Netz provides no reliable support for her conclusory statements. In her report, she only cites to communications between USASF and Varsity regarding apparel rules.¹⁹¹ I understand that apparel rule changes are done with the involvement of various committees, which include apparel manufacturers (other than Varsity) as well as other interested parties (*e.g.*, choreographers, people producing makeup, bows).¹⁹² As such, Dr. Netz provides no evidence that USASF creates any material advantage for Varsity in those communications.
96. My review of the evidence also shows that USASF’s apparel rules have been in effect for a long time (well before the alleged class period) and had few changes over the years (typically announced well ahead of their implementation).¹⁹³ In particular, I did not find any major changes in USASF’s Image

¹⁸⁸ Deposition of Sarah Minzghor, December 17, 2021, 151:2-152:8; 179:18-180:9; 180:24-181:4. *See also*, Deposition of Rebecca Foster, December 21, 2021, 179:7-180:5.

¹⁸⁹ *Netz Report*, p. 59.

¹⁹⁰ *Netz Report*, p. 60. Dr. Heeb also claims that “USASF restricts apparel vendors or event producers from exhibiting merchandise at the USASF national meetings.” (*Heeb Report*, ¶ 188, and n. 213). *See also*, *Aronoff Report*, ¶ 107 (“Varsity bans non-Varsity vendors from marketing their products ... at USASF end-of-season events.”). Dr. Heeb’s claim is based on a June 2020 document reflecting a new USASF policy by which it would not allow “apparel [vendors] or event producers” to exhibit at the National Meeting because “[t]hose two groups typically require an enormous amount of space.” (VAR00370795-96, at 96). I understand that the National Meeting in 2020 did not happen because of the Covid-19 pandemic. Importantly, the new rule applies to all apparel vendors and event producers, including Varsity. As such, it does not support a claim of USASF conspiring to favor Varsity over its rival apparel vendors or event producers.

¹⁹¹ *Netz Report*, n. 239.

¹⁹² *Chadwick Dep.*, 449:13-451:18 (explaining that Rebel, for example, was involved “from the very beginning” in the image policy).

¹⁹³ I understand that the USASF Image Policy was passed in March 2012, as a result of input gathered during the Summer Regional Meetings and a survey conducted during January and February. *See* USASF_00088638-9, at 39; USASF_00088659-61. The language of the Image Policy was further refined in

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Policy (which includes uniform, cover-up, makeup, and choreography guidelines) during the alleged class period.¹⁹⁴

97. Dr. Netz provides no analysis showing any material rule changes that were adopted to advantage Varsity (and disadvantage rival apparel vendors). Dr. Netz also fails to provide in her report any reliable analysis showing that Varsity received material information from USASF—not available to rival apparel vendors—in advance of rules changes which gave Varsity such a head start that it could impose a non-transitory price increase on apparel or otherwise affect the competitive process by substantially disadvantaging Varsity’s rivals. Without any such analysis, Dr. Netz cannot provide support for her claim that USASF’s apparel rules create barriers to entry for Varsity’s rivals—nor can she provide any support for Plaintiffs’ conspiracy allegations.
98. Mr. Aronoff also claims that USASF has enacted competition rules that “exclude or limit non-Varsity entities.”¹⁹⁵ As support, he refers to USASF not making competition rules available to non-USASF members and the fact that USASF copyrighted its competition rules.¹⁹⁶ Mr. Aronoff claims, without

May 2012 and July 2012 after feedback from the USASF membership. See, USASF_00088657-8; USASF_00088659-61; USASF_00088662-4. The main guideline impacting apparel set to go into effect for the 2012-2013 season was the “Cover Up Guidelines,” which simply stated that “Athletes with non-full top uniforms must wear a t-shirt or other suitable cover up over their uniforms unless they are in the warm-up area, traveling as a group directly to or from the warm up area, or on the performance stage.” (USASF_00088660-1, at 60). There was also bow guideline announced at that time set to go into effect the 2013-2014 season. (*Id.*) And, in the same document, a more significant uniform policy was not scheduled to go into effect until the 2015-2016 season (roughly 3.5 years after it was adopted), which, for example, restricted “risqué, sexually provocative or lingerie looking or inspired uniform or garments” and required skirts to “fully cover the hips.” (*Id.*, at 61). See also, 2015-2017 USASF Cheer Safety Rules (USASF_00046687-740, at 737-738).

¹⁹⁴ See, e.g., 2015-2017 USASF Cheer Safety Rules (USASF_00046687-740), at 737-738 (USASF Image Policy); 2018-2019 USASF Cheer Safety Rules (USASF_00042331-89), at 81 (USASF Image Policy); 2017-2019 USASF/ISASF Cheer Safety Rules (USASF Image Policy) (USASF_00030653-710, at 708-709); 2018-2019 USASF Cheer Rules, at 39 (USASF Image Policy renamed as USASF Athletic Performance Standards) (USASF_00042331-89, at 81).

¹⁹⁵ *Aronoff Report*, ¶ 86.

¹⁹⁶ *Aronoff Report*, ¶ 86. In addition, Mr. Aronoff claims that “Varsity, via the USASF, also controls the training process for cheer competition judges” and argues that, as relief, an independent entity should train judges. (*Aronoff Report*, ¶¶ 86, 100). Mr. Aronoff does not claim to provide any evidence of a conspiracy between USASF and Varsity regarding judges. In addition, the reference provided by Mr. Aronoff (*id.*, n. 156) specifies that Varsity trains judges “on the Varsity scoring system.” See Deposition of Jamie Parrish, March 3, 2022, 108:16-109:1. I am not aware of any requirement from USASF that event producers need to use Varsity’s judges or Varsity’s scoring system. I understand that event producers are free to train their own judges. However, because many event producers use Varsity’s scoring system, some non-Varsity event producers may rely on judges trained under Varsity’s program. See, e.g., VAR00167235-87, at 37 (noting that Varsity’s scoring system had been “adopted by more than 65 EPs so far”); *Stangle Dep.*, 167:7-11 (“Q. You said that USASF does not dictate scoring, am I – am I correct? Did I state that correct? [...] A. Yes. Except for the World Championship.”); *Clark Dep.*, 279:11-25; 280:2-8; 282:4-9. In addition, I understand that USASF trains officials and judges only for Worlds. See, e.g., USASF_00032565-665 (USASF-branded training deck for judges at Worlds).

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any supporting analysis, that such rules make it “virtually impossible” for competing event producers to introduce and establish alternative cheer competitions.

99. Mr. Aronoff’s claims do not make economic sense. *First*, the referenced rules, at most, disadvantage potential non-USASF event producers. They do not favor Varsity relative to other USASF-sanctioned event producers. As discussed above, just because USASF promulgates rules to the benefit of its members and event producers, and Varsity is the largest event producer, it does not follow that such rules are the result of a conspiracy to favor Varsity relative to its rivals. *Second*, Mr. Aronoff does not even attempt to analyze the procompetitive reasons for USASF not to freely share its rules with non-USASF members and potential USASF rivals. For example, there could be a risk that non-members take USASF’s rules, modify them (potentially making them less safe), and use them without clarifying that they are not USASF rules. Or rules from USASF could be used with the USASF logo or otherwise suggesting that a non-sanctioned event is affiliated with USASF, thereby free riding on USASF’s investments and reputation. *Third*, Mr. Aronoff provides no evidence to support his claim that lack of access to USASF is what made it “virtually impossible” for any potential event producer to introduce an event or a competition. I understand that at different times during the alleged class period USASF rules were publicly available on its website.¹⁹⁷ Moreover, even if access to the rules were limited, Plaintiffs’ experts provide no evidence that USASF restricted non-members from using them if they obtained a copy.¹⁹⁸ Nor could USASF prevent non-members from developing their own set of rules based on similar concepts.¹⁹⁹ In fact, I understand that Open Championship Series, a non-USASF entity,²⁰⁰ closely incorporated elements of USASF’s apparel (and general competition) rules into the rules they established for its competitions.²⁰¹ If USASF’s apparel rules favored Varsity, as Plaintiffs’ experts claim, they would not have been adopted nearly in full by

¹⁹⁷ See, e.g., USASF, *2016-2017 Safety Rules & Glossary*, <https://web.archive.org/web/20161106132927/http://usasf.net/safety/cheer/rules/16-17/> (accessed via the Wayback Machine); USASF, *Cheer Rules*, <https://web.archive.org/web/20170806210422/http://usasfrules.com:80/> (accessed via the Wayback Machine), linking the 2017-2019 rules; USASF, *Rules Access*, <https://web.archive.org/web/20180922121830/http://www.usasf.net/safety/cheer/rulesmembers> (accessed via the Wayback Machine), stating that USASF removed its rules from its public websites because unauthorized use was “put[ting] athletes at risk”, and explaining how the rules could be accessed; USASF, *Rules*, <https://www.usasf.net/rules> and <https://web.archive.org/web/20200806102642/https://www.usasf.net/rules> (accessed via the Wayback Machine), showing that USASF’s current rule page has been live since at least August 6, 2020.

¹⁹⁸ Deposition testimony is consistent with the fact that non-members used USASF rules. See Deposition of Brian Elza, November 16, 2021, 309:5-11.

¹⁹⁹ I also understand that whatever copyright protection USASF has in its rules, it does not prevent others from composing their own set of rules incorporating similar concepts.

²⁰⁰ I understand that Open Championship Series is involved in a separate lawsuit involving USASF.

²⁰¹ See, e.g., The Open Championships, *The Open Championship Series Cheerleading Rules & Guidelines 2022-2023*, (apparel rules at p. 6), available at: <https://openchampionshipseries.com/wp-content/uploads/2022/07/OCS-RuleBook.pdf>.

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a non-USASF group (and one actively marketing an alternative to Worlds,²⁰² such as the Open Championship Series).



Jonathan M. Orszag

September 23, 2022

²⁰²

See, e.g., The Open Championships, *Allstar World Championship*, <https://theallstarworldchampionship.com/>; The Open Championships, *About Us*, <https://openchampionshipseries.com/about-us/> (“In 2019, a group of event producers joined together to create the Open Championship Series after realizing the cheerleading industry needed solutions to ever-growing prices, lack of choices, and limited championship options”); The Open Championships, *Allstar World Championship Frequently Asked Questions*, <https://theallstarworldchampionship.com/faqs/> (“The same group that brought you The Open Championship Series and changed the way we compete now offers an exciting, and very exclusive opportunity for the World’s top teams! This is a bid only event for the world’s best teams in the Mini, Youth, Junior and Senior divisions. Teams will have the ability to qualify at hundreds of events offering At-Large Bids and Full Paid Bids.”).

EXHIBIT 4

2997

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :
et al., :
 :
Plaintiffs, CA No. 16-1494 (JDB)
 :
v. :
 : DAY 11
AETNA, INC., et al., : P.M. SESSION
 :
 :
Defendants. :

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE JOHN D. BATES
UNITED STATES DISTRICT JUDGE

Monday, December 19, 2016

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Proceedings reported by machine shorthand, transcript
produced by computer-aided transcription.

P R O C E E D I N G S

THE COURT: All right. Good afternoon.

MR. MAJORAS: Good afternoon, Your Honor.

THE COURT: Mr. Majoras.

MR. MAJORAS: **The defendants call Mr. Jonathan Orszag.**

J O N A T H A N O R S Z A G,

Having been called as a witness on behalf of the Defense and having been first duly sworn by the Deputy Clerk, was examined and testified as follows:

THE COURT: Good afternoon, Mr. Orszag.

THE WITNESS: Good afternoon, Your Honor.

THE COURT: Mr. Majoras?

MR. MAJORAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MAJORAS:

Q. Mr. Orszag, would you please introduce yourself to the Court.

A. My name is Jonathan Orszag. I'm a senior managing director at Compass Lexecon, an economic consulting firm. I also was a founder of the firm, and on the firm's executive committee.

Q. Would you describe your educational

1 background.

2 A. Sure. I received my undergraduate degree
3 in economics from Princeton University, and then I
4 received a Marshall Scholarship to attend Oxford
5 University where I received a master's of science.

6 Q. What is a Marshall Scholarship?

7 A. After the World War II, as a thank you to
8 the American people, the British government said they'd
9 fund I believe it's 32 Americans to travel to England to
10 get their graduate education.

11 Q. What was your degree from Princeton
12 focused on?

13 A. Economics.

14 Q. And how about your master's from Oxford?

15 A. It was economics and history.

16 Q. Could you share with us some of the
17 educational highlights, particularly of earning your
18 master's degree from Oxford relating to economics.

19 A. Part of my studies -- I'd sort of take
20 the whole period because, when I was an undergraduate, I
21 took many graduate classes. I actually served as a
22 teaching assistant for one of the leading
23 econometricians at Princeton as an undergraduate, which
24 is usually reserved for graduate students.

25 So I was a research assistant for Alan Krueger,

1 who is a leading labor economist, and I worked for him
2 for many years. And so all of that was part of my
3 educational experience, both undergraduate and then in
4 graduate school.

5 Q. And in terms of your economics work at
6 Oxford, did you have a focus?

7 A. I studied a variety of things involving
8 labor economics. Applied microeconomics was my focus.

9 Q. What is applied microeconomics?

10 A. It's the study of the firm. Study of
11 industries is the area that I focused in on even more.
12 And so I take a pretty broad interest in economics.

13 When I went to Oxford, I was very focused on
14 policy issues in particular. I had spent time in the
15 federal government prior to that, and I knew I was going
16 back to work in the federal government. And so I like
17 the application of economics to real-world situations.
18 And so that was a focus of my research and my work when
19 I was in school.

20 Q. Once you completed your work toward your
21 master's degree, did you then study for a Ph.D.?

22 A. No, I did not.

23 Q. What did you do instead?

24 A. Well, I had previously been asked to come
25 back to serve at the White House on the president's

1 National Economic Council.

2 Q. What time was that? What year?

3 A. This was in 1996.

4 Q. I'm sorry to interrupt. Please go ahead.

5 A. So I had this opportunity and, as a young
6 person, it was a very difficult choice for me. I had
7 come from a family of academics. My father was a
8 professor of mathematics. So I grew up with a PDP-11 in
9 my basement, which is a big computer. And my oldest
10 brother was an academic.

11 So my father was pushing me very much to stay in
12 academics, but my heart and my passion was policy. And
13 so I really wanted to go back to Washington. And I had
14 this terrific opportunity to return to the National
15 Economic Council and work with some absolutely brilliant
16 economists.

17 So had previously, when I was in government,
18 worked with Alan Krueger, who had brought me to the
19 government; Joe Stiglitz, who won the Nobel Prize in
20 economics, and Joe and I have written a number of papers
21 together; Larry Summers, who is absolutely brilliant,
22 has a very big brain; Janet Yellen, who's currently the
23 chair of the Federal Reserve.

24 They were all economists in the administration
25 at that time. And as a young staff person, I could work

1 directly with them and learn from them. So it was an
2 amazing educational experience.

3 Q. Could you give us just a bit of a
4 background.

5 What is the National Economic Council?

6 A. Sure. It was created in 1993 by
7 President Clinton to coordinate economic policy
8 throughout the government. And so it sits on top of all
9 of the economic agencies. So the Department of
10 Treasury, the Counsel of Economic Advisers, the
11 Department of Commerce, the Office of Management and
12 Budget. And it was responsible for coordinating policy
13 and providing the president unbiased guidance about what
14 was the best course of action.

15 Q. So once you joined the National Economic
16 Council, how long were you engaged with that?

17 A. So I started at the National Economic
18 Council at the end of 1995. I was there through 1996.
19 I then left. I then came back in 1997, and I was in
20 government through 2000.

21 My last job in government was -- I was asked to
22 run the policy department at the Department of Commerce.
23 And so that was the last job I had in government was the
24 director of the Office of Strategic Planning, which is
25 the secretary's seniormost policy position.

1 Q. And how does that relate to your economic
2 studies and work?

3 A. When you're in charge of the policy
4 unit -- the Commerce Department has all of the economic
5 statistics agencies except for the Bureau of Labor
6 Statistics. So it's responsible for the decennial
7 census, for example, economic growth statistics,
8 et cetera. I spent a lot of time involved in
9 telecommunications issues, innovation issues, et cetera.

10 Q. What was the total amount of time you
11 spent with the government?

12 A. Almost six years.

13 Q. While you were with the government in
14 that six years of service, did you have any involvement
15 with Medicare issues?

16 A. Yes, I did.

17 Q. Could you tell us about that?

18 A. When I started in government, when Alan
19 Krueger brought me to government, I was actually right
20 next door at the Department of Labor. And the Secretary
21 of Labor -- I was in the Office of the Chief Economist
22 there.

23 The Secretary of Labor is a trustee of Medicare.
24 And unbeknownst to me, when I was a young staff person,
25 no one at the Department of Labor really had that much

1 experience with Medicare. And so it had been tasked to
2 me to prepare the secretary's testimony for Congress in
3 June of 1995.

4 So I spent a couple months learning everything I
5 could about Medicare, and it was a different program
6 somewhat back then. And there were funding issues. And
7 so I spent my time learning as much as I could, and I
8 was the principal author of the secretary's testimony.

9 Q. The testimony related to Medicare?

10 A. Related to Medicare before Congress.

11 Q. So once you ended your government
12 service, have you remained involved in policy issues?

13 A. Yes, I have.

14 Q. In what way?

15 A. In several ways. I'd probably focus on
16 three. First, I've been a fellow at -- or senior fellow
17 at a think tank here in Washington, D.C., at various
18 times over the last 15 years.

19 Second, Candidate Obama, then candidate Obama,
20 in 2008, asked me to serve on a very small, I think it
21 was, eight or nine people pretransition economic team
22 responsible for preparing the transition team, if he
23 were to win, on economic issues. So I served in that
24 role.

25 I was actually responsible for auto-related

1 issues. So I handed off my work to that team that
2 worked on the auto bailout issues when they assumed
3 office.

4 The third way is I've continued to advise
5 President Clinton on development issues in particular in
6 Africa. And I've traveled with him to Africa, to East
7 Africa, South Africa on those development-related
8 issues.

9 Q. So backing up a bit to about 2000, is
10 that when you left your government service?

11 A. That is correct, sir.

12 Q. By that, I mean your government
13 employment.

14 A. That is correct.

15 Q. What did you do after that?

16 A. I started the predecessor firm to Compass
17 Lexecon.

18 Q. And that is -- currently, you're the
19 senior managing director of Compass Lexecon?

20 A. That is correct.

21 Q. Talk to us about your experience both
22 with the predecessor company and currently at Compass
23 Lexecon.

24 A. I folded the -- the original firm my
25 brother and I started, I folded it into Compass Lexecon.

1 So it's one and the same. We have focused on what I'd
2 call interesting economic issues, applied
3 microeconomics. And I've had a speciality in mergers
4 over that time period.

5 Q. Give us a sense of how large Compass
6 Lexecon is today.

7 A. We have about 420 employees.

8 Q. And I'd like to focus just on your
9 consulting work now since you've been at Compass
10 Lexecon.

11 Could you please describe the types of matters
12 that you have found yourself involved in.

13 A. As I said, I find myself involved in many
14 different economic issues. My main focus has been
15 mergers.

16 So since I started this, I've probably have
17 worked on well more than 100 mergers. I stopped
18 counting actually at 100. We're probably at about 150
19 or more at this point.

20 Q. Is that always in a litigation context?

21 A. It's very rarely in the litigation
22 context. It's mostly in -- an advisory role is --
23 probably takes the vast majority of those situations.

24 Q. How would you describe the fields of work
25 that your consulting work has focused on?

1 A. Applied microeconomics, industrial
2 organization. And I would say antitrust economics is a
3 simpler way of saying industrial organization. That's
4 the industrial organization's more technical term, I'd
5 say.

6 Q. You described for us earlier a bit about
7 applied microeconomics.

8 What's your description of the latter two, the
9 industrial organization and antitrust economics?

10 A. It's a subset of applied microeconomics.
11 It's the theory of the firm, the study of industries.
12 And so it's, in essence, what we're here to study today,
13 conduct of firms as they merge, conducts of firms as
14 they enter into contracts, et cetera.

15 Q. Now, have you authored any publications
16 on these topics?

17 A. Yes, I have.

18 Q. I know they're in the exhibit -- I'm
19 sorry -- Appendix B to your report. I was wrong.
20 Appendix A to your report.

21 But could you just describe generally the types
22 of publications you've authored.

23 A. Given the variety of interest that I take
24 in economics, the publications I've had are various as
25 well. I've done everything from the economics of

1 college sports to the consumer benefits of broadband to
2 issues related to patent settlements.

3 Q. Are you involved in any professional
4 economic societies?

5 A. Yes, I am.

6 Q. Which ones?

7 A. I'm a member of the American Economic
8 Association, the American Finance Association, and the
9 Econometric Society.

10 Q. Have you received any rewards related to
11 your work?

12 THE COURT: I'm assuming he's gotten some
13 rewards.

14 THE WITNESS: Those are mouths that you have
15 to feed.

16 BY MR. MAJORAS:

17 Q. Let me make sure we're clear.

18 Have you received any awards for your work,
19 sir?

20 A. Yes, I have.

21 Q. Please tell us about those.

22 A. Can I have my mom testify?

23 So when I was in government, I received an award
24 for expanding economic opportunity in America for
25 efforts, for a bill that I helped design and then get

1 passed helping to increase savings. And it was a
2 specific policy related to savings. So I won that
3 award.

4 In the late 1990s when I was younger than I am
5 today, I won various awards for being a top young
6 competition economist. And the most -- this year, I was
7 named as one of the top ten most highly regarded
8 competition economists in a survey of lawyers and
9 economists.

10 Q. Let's turn now to the work that you've
11 done on disputes and in litigation.

12 How many matters have you worked on that were
13 either in litigation or anticipated litigation?

14 A. With the caveat that I'm not sure how I
15 answer anticipated litigation because, as an economist,
16 I don't necessarily have full insight, what I'd say is,
17 if you include testifying, I would say it's probably a
18 dozen to a dozen and a half matters that I've testified
19 in court.

20 Q. And let's back up a little bit from
21 testifying.

22 Have you also been involved in matters where
23 you submitted expert reports but never ended up
24 testifying?

25 A. For sure, because many cases end up

1 settling. So I'd probably double that number, but I've
2 never counted it that way.

3 Q. And how many times have you been accepted
4 by a court or tribunal as an expert in economics.

5 A. I've never been rejected as an expert in
6 economics or econometrics on that metric.

7 Q. So that would take us back to the dozen
8 or so that ended up in litigation?

9 A. That is correct.

10 Q. Of those, when you have testified, how
11 often has the subject of your testimony related to
12 merger work and the types of issues you've addressed
13 here?

14 A. If I take a broad view of antitrust
15 economics or applied microeconomics, basically every
16 single time.

17 Q. Have you ever testified before Congress
18 or other governmental bodies?

19 A. Yes, sir.

20 Q. Which ones?

21 A. In front of Congress, in front of the
22 Federal Communications Commission, in front of the
23 European Court of First Instance, which is always a very
24 interesting experience because there are 13 judges and
25 no real cross-examination except from the judges. I've

1 been in front of foreign tribunals and other regulatory
2 authorities.

3 Q. Have you ever been barred in whole from
4 testifying before a court?

5 A. Not in whole.

6 Q. How about in part?

7 A. One time.

8 Q. Please describe that.

9 A. Judge Cote, in the Apple matter, accepted
10 all of my econometric analyses, and then there were
11 analyses in another relevant market that she rejected,
12 as I understand it -- I'm not a lawyer -- as a matter of
13 law. And then she criticized those analyses as well.

14 Q. But you were accepted at least for what
15 part?

16 A. For all my econometric work.

17 Q. And even after that case, you have since
18 been accepted again as a qualified expert in economics?

19 A. In this courthouse, yes, sir.

20 Q. Please describe that for us.

21 A. I testified last year in the
22 GE-Electrolux merger matter where the government had
23 sought to block that merger. And I was the economic
24 expert for the merging parties.

25 MR. MAJORAS: Your Honor, at this time, the

1 defendants move that Mr. Orszag be qualified as an
2 expert in the field of an applied microeconomics,
3 industrial organization, and antitrust economics.

4 MR. CONRATH: No objection.

5 THE COURT: Without objection, we will admit
6 Mr. Orszag and receive his testimony in the field or
7 fields of applied microeconomics, industrial
8 organization, and antitrust economics. I assume there's
9 some overlap, as he's described it, between those. But
10 we welcome him and will receive the testimony.

11 MR. MAJORAS: Thank you, Your Honor.

12 BY MR. MAJORAS:

13 Q. And, Mr. Orszag, if there are particular
14 aspects about your opinions that one of those fields is
15 more relevant than another's, please explain that to us.

16 How did you first get involved in looking at
17 the Aetna-Humana merger?

18 A. I received a phone call from counsel for
19 Aetna right around the time that the merger was either
20 signed or within a week or two either direction.

21 Q. And let's draw a line between the period
22 you just described and when litigation was filed.

23 Would you briefly describe the work that you
24 did as a consultant.

25 A. Well, the first thing, I do what I always

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Civil Action
) No. 15-1039
v.)
) December 3, 2015
AB ELECTROLUX, et al.,) 11:08 a.m.
)
Defendants.) Washington, D.C.
)
)

VOLUME 15 - MORNING and PARTIAL AFTERNOON SESSION
TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
(Excluding Closed/Sealed Portions)
BEFORE THE HONORABLE EMMET G. SULLIVAN,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

* * * * *

(Thereupon, the previously closed proceedings concluded
and the following further proceedings were held in open Court:)

* * * * *

MR. DEMITRACK: Good afternoon, Your Honor.

THE COURT: Good afternoon, Counsel.

MR. DEMITRACK: Tom Demitrack for the Electrolux
defendants. The defendants call Mr. Jonathan Orszag.

THE COURT: All right.

MR. DEMITRACK: Your Honor, while the witness is
approaching, you should have two binders: One, a small binder
with a series of slides that we'll be using, called Volume 1.

THE COURT: Let's see. I'm sure I do.

(Discussion had off the record.)

THE COURT: All right. Good afternoon, sir.

THE WITNESS: Good afternoon to you.

(JONATHAN ORSZAG, DEFENDANTS' WITNESS, SWORN)

DIRECT EXAMINATION OF JONATHAN ORSZAG

BY MR. DEMITRACK:

Q. Good afternoon. Can you please state your name so we have it for the record?

A. Jonathan Orszag.

Q. Mr. Orszag, where are you currently employed?

A. I'm a senior managing director at Compass Lexecon, an economic consulting firm.

Q. And what is Compass?

A. It's an economic consulting firm. We do a wide variety of work on economic matters. A big portion of our work involves antitrust matters.

Q. You're married, I assume?

A. Yes, I am.

Q. You're wearing a ring. Kids?

A. 11-month-old daughter who has given me many illnesses, so thus I'm nursing a sore throat again.

Q. If you put the mic up close, that will assist, sir.

A. Thank you.

Q. Could you tell the Court a little bit about your educational background?

A. Sure. I studied first at Princeton. I studied economics. And given that it's relevant for this case, I had three mentors or advisors while I was there. One is -- not as relevant for this case -- Alan Krueger, who's gained some notoriety recently

1 because he was mentioned in one of the presidential debates.

2 Another was Orley Ashenfelter, A-S-H-E-N-F-E-L-T-E-R,
3 and Professor Ashenfelter did one of the merger retrospectives
4 on the Maytag/Whirlpool deal which I'll be talking about today.

5 And my final mentor advisor was Robert Willig, who's an
6 antitrust economist and scholar and was mentioned earlier in
7 this case as someone who's laid the foundations for some of the
8 analyses that we will do here.

9 **Q.** Okay. And do you have any degrees after Princeton?

10 **A.** Yes. I received a scholarship to attend Oxford University,
11 and I received a Master's of Science there at Oxford.

12 **Q.** No Ph.D.?

13 **A.** No. When I was at Oxford I had -- I was given the
14 opportunity to return to Washington and serve for President
15 Clinton on his National Economic Council, and I had to make a
16 tradeoff: To stay in school and finish my Ph.D., or to try to
17 apply economics in real-world situations. And I came from an
18 academic family. My oldest brother was an academic. My father
19 was one at MIT, Princeton and Yale throughout his career. And I
20 made the decision at that time that serving in government was
21 what was best for me, and it would allow me to learn from some
22 of the best economists that there were in the world. At the
23 time Janet Yellen, who's now the chairwoman of the Federal
24 Reserve, was the chair of the Council of Economic Advisors,
25 people like Lori Polsen, Gene Sperling and many others,

1 including Larry Summers, who were there, were people who helped
2 inform how to apply economics to real-world situations for me.

3 **Q.** And how long did you stay in that position, sir?

4 **A.** I stayed in there a total of six years working in the
5 Clinton administration. I started actually in the building
6 right next door here at the Department of Labor, and then --
7 this was before I went to graduate school. And then I worked at
8 the White House. And I finished my government career as the
9 director of the Office of Policy and Strategic Planning at the
10 U.S. Department of Commerce.

11 **Q.** And what did you do in that position, Mr. Orszag?

12 **A.** I did what I had done at the White House, which was apply
13 economics to real-world policy situations. It was also right
14 around 1999, 2000, so I was deeply involved in the biggest
15 survey that the government does every year, the decennial
16 census. And as some people in the room may know, the Department
17 of Commerce also oversees a number of economic statistics
18 agencies, so I was deeply involved in those issues as well.

19 **Q.** And you said you spent about six years with the Clinton
20 White House.

21 Did you have any subsequent government service?

22 **A.** No, I left -- when I left the administration, I started in
23 the private sector. I've continued to keep my hand in the
24 policy world. I'm a senior fellow at the Center for American
25 Progress here in Washington, D.C., and I've been asked by then

1 candidate Obama to serve on a very small pre-transition economic
2 team to help advise on what to do when -- if he were elected in
3 November of 2008 and how he should get running right away. And
4 so it was a team that included the current Secretary of the
5 Treasury, Jack Lew; the former ambassador to the OACD; the
6 former White House chief of staff; somebody who runs a think
7 tank here in Washington, D.C. Let's see, it was also the former
8 director of the Congressional Budget Office. So it was a very
9 small team. There were nine of us, and we started meeting in
10 the summer of 2008, and we met up until the election day when we
11 then worked with the transition team. And I was responsible for
12 overseeing issues with the auto industry. So how could the
13 president, once he took office, help get the auto industry back
14 up on its feet.

15 **Q.** In the late summer early fall 2008 was a significant time in
16 this country's history, correct?

17 **A.** Yes.

18 **Q.** Economically?

19 **A.** Economically, yes. In September of '08 the country went
20 through a very significant market panic, I think, is fair to
21 describe it as, and liquidity crisis. And we saw companies that
22 we never thought could go under go bankrupt. And so that period
23 from September to November was particularly an important time
24 for the economy.

25 **Q.** Let's turn to your work at -- your professional work at

1 Compass Lexecon. What type of matters do you work on at
2 Compass?

3 **A.** I like to say I work on anything with interesting economic
4 issues.

5 **Q.** Have you analyzed mergers?

6 **A.** That's some of the most interesting work I think that the
7 firm has, and so I'm very involved in the analysis of mergers.
8 It's what I primarily do.

9 **Q.** Okay. Approximately how many mergers have you analyzed from
10 a competitive standpoint during your period of time at Compass
11 Lexecon?

12 **A.** It's too many to count at this point. I stopped counting
13 when I did about 100, and I believe it's now something on the
14 order or magnitude of 125 to 150 where I've either provided
15 counseling prior to a merger -- so that may be a merger that
16 never got announced -- to working on consummated mergers.

17 **Q.** And in the course of your work on merger analysis, have you
18 also addressed the issue of efficiencies insofar as they relate
19 to mergers?

20 **A.** Yes. Efficiencies are a central part of the analysis of
21 mergers, and so in many, not all cases, I've been involved in
22 the efficiencies analysis.

23 **Q.** And you've conducted efficiencies in the course of that
24 work?

25 **A.** Yes, I have.

1 **Q.** Have you received any professional honors for your work in
2 the field of economics?

3 **A.** Yes, I have. When I was in government, I received an award
4 from a nonprofit here in Washington, D.C. for my work for
5 expanding economic opportunity in America. This was about
6 increasing savings rates among lower income individuals and
7 families. It was a policy idea that I had worked on for a
8 number of years and then helped get implemented, passed by
9 Congress and then funded. And so I received an award during
10 that time.

11 In the private sector I've received awards for being
12 40 -- under 40 in the industry magazines, in terms of best
13 competition economists and then one of the best young
14 competition economists, and acknowledged in various other
15 magazines about being at the top of the competition space, I'd
16 say.

17 **Q.** Have you published any papers in the field of economics?

18 **A.** Yes, I have.

19 **Q.** And have you published any papers in the field of economics
20 in a peer-reviewed journal?

21 **A.** Yes, I have.

22 **Q.** Okay. What's a peer-reviewed journal?

23 **A.** It's when you submit a paper and other economists review it,
24 provide comments and either it's accepted outright, it's
25 accepted with revisions or it's rejected. And so in the cases

1 where it was either accepted or accepted with revisions, it
2 ended up in the journal.

3 **Q.** Are you a member of any professional economic associations?

4 **A.** Yes, I am. I'm a member of the American Economic
5 Associations, the American Finance Association, and the
6 Econometric Society.

7 **Q.** Thank you. Have you testified in or before courts or other
8 judicial bodies or administrative bodies?

9 **A.** Yes, I have.

10 **Q.** A number of times?

11 **A.** I haven't counted. If I include testifying to Congress, I'd
12 probably say 15 to 20, but I don't have a precise number in my
13 head.

14 **Q.** All right. Thank you.

15 And in your testimony in courts or other judicial
16 bodies, have you addressed issues of economics?

17 **A.** Every single time I would say that they were about economics
18 because that's what I do.

19 **Q.** Okay. And is there a particular area of economics that you
20 specialize in?

21 **A.** I like to call it applied microeconomics. It's -- because
22 my specialty is in applying economics to real-world situations,
23 so that's why I like using the term "applied microeconomics."
24 And that would cover a subpart of microeconomics, which would be
25 industrial organization, which can also be known as antitrust

1 economics.

2 **Q.** Industrial organization is the study of the firm?

3 **A.** Yes.

4 **Q.** Okay. And just so we're clear, what do you mean by the firm
5 in that answer?

6 **A.** I think it's fair to just -- I like to broaden it and use a
7 term that economists often like to use, "industrial
8 organization." I think it's just better to use "antitrust
9 economics" or "competition economics" because that -- while it
10 may sound nice for economists to use terms like "industrial
11 organization," they don't have much meaning outside of the field
12 of economics, and so using "antitrust economics" or "competition
13 economics" seems to me to be more understandable for people
14 outside of the economists' space.

15 MR. DEMITRACK: Your Honor, at this time the defendants
16 move to qualify Mr. Orszag as an expert in the field of applied
17 microeconomics, industrial organization and antitrust economics.

18 THE COURT: All right. Any voir dire, Counsel?

19 MR. SHUMAKER: No, Your Honor, no objection.

20 THE COURT: All right. Then the Court will allow the
21 witness to testify as an expert in those proffered areas.

22 All right, Counsel.

23 MR. DEMITRACK: Thank you.

24 BY MR. DEMITRACK:

25 **Q.** When you are retained to evaluate a merger, is there an

EXHIBIT 6

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

TIER 1 EVENT PRODUCERS 2014-2015 SEASON

Company Name	Varsity-Owned?
All Star Challenge	Yes
American Cheer Power	Yes
American Cheerleaders Association	Yes
Athletic Championships	Yes
Cheer LTD.	Yes
Cheersport	Yes
National Cheerleaders Association	Yes
One Up Championships	Yes
Pac West Spirit Group	Yes
Spirit Cheer	Yes
Spirit Festival	Yes
Spirit Sports	Yes
The American Championships	Yes
United Spirit Association	Yes
Universal Cheerleaders Association	Yes
World Spirit Federation	Yes
All Things Cheer	No
American Cheer and Dance Academy	No
American Spirit Championships	No
America's Best Championships	No
Champion Spirit Group	No
Cheer America Championships	No
Cheer and Dance Extreme	No
Cheer Tech	No
COA Cheer & Dance	No
Coastal Corporation	No
Golden State Spirit Association	No
Great Lakes Cheer	No
JAMfest	No
JAMZ	No
Mardi Gras Spirit Events	No
Mid-Atlantic Cheer	No
Spirit Celebration	No
Spirit Unlimited	No
Worldwide Spirit Assoc.	No

Source : USASF_00085173

Notes:

[1] I determined which Worlds Bid Events were owned by Varsity in the 2014-2015 season by supplementing my findings related to Varsity ownership during the alleged class period with communications my team had with Varsity counsel related to the timing of Varsity acquisitions.

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

TIER 1 EVENT PRODUCERS 2011-2012 SEASON

Company Name	Varsity-Owned?
All Star Challenge	Yes
American Championships	Yes
American Cheer Power	Yes
American Cheerleaders Association	Yes
Athletic Championships	Yes
National Cheerleaders Association & NDA	Yes
One Up Championships	Yes
Pac West Spirit Group	Yes
Spirit Cheer	Yes
Spirit Festival	Yes
Spirit Sports	Yes
United Spirit Association	Yes
Universal Cheerleaders Association & UDA	Yes
World Spirit Federation	Yes
American Cheer and Dance Academy	No
AmeriCheer & AmeriDance	No
Champion Spirit Group	No
Cheer America Championships	No
Cheer LTD.	No
Cheer Tech	No
Cheersport	No
COA Cheer & Dance	No
Coastal Corporation	No
Elite Cheer Companies	No
Golden State Spirit Association	No
Great Lakes Cheer	No
JAMfest	No
Jamz	No
Mid-Atlantic Cheer	No
Spirit Celebration / Cheer Gyms Association	No
Worldwide Spirit Assoc.	No
Xtreme Spirit	No

Source : USASF_00080543

Notes:

[1] I determined which Worlds Bid Events were owned by Varsity in the 2011-2012 season by supplementing my findings related to Varsity ownership during the alleged class period with communications my team had with Varsity counsel related to the timing of Varsity acquisitions.

EXHIBIT 7

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

Season	Number of Varsity-Owned Tier 1 Events	Number of Total Tier 1 Events
2014-2015	16	35
2011-2012	14	32

TIER 1 EVENT PRODUCERS 2014-2015 SEASON

Company Name	Varsity-Owned?
All Star Challenge	Yes
American Cheer Power	Yes
American Cheerleaders Association	Yes
Athletic Championships	Yes
Cheer LTD.	Yes
Cheersport	Yes
National Cheerleaders Association	Yes
One Up Championships	Yes
Pac West Spirit Group	Yes
Spirit Cheer	Yes
Spirit Festival	Yes
Spirit Sports	Yes
The American Championships	Yes
United Spirit Association	Yes
Universal Cheerleaders Association	Yes
World Spirit Federation	Yes
All Things Cheer	No
American Cheer and Dance Academy	No
American Spirit Championships	No
America's Best Championships	No
Champion Spirit Group	No
Cheer America Championships	No
Cheer and Dance Extreme	No
Cheer Tech	No
COA Cheer & Dance	No
Coastal Corporation	No
Golden State Spirit Association	No
Great Lakes Cheer	No
JAMfest	No
JAMZ	No
Mardi Gras Spirit Events	No
Mid-Atlantic Cheer	No
Spirit Celebration	No
Spirit Unlimited	No
Worldwide Spirit Assoc.	No

Source : USASF_00085173

Notes:

[1] I determined which Worlds Bid Events were owned by Varsity in the 2014-2015 season by supplementing my findings related to Varsity ownership during the alleged class period with communications my team had with Varsity counsel related to the timing of Varsity acquisitions.

TIER 1 EVENT PRODUCERS 2011-2012 SEASON

Company Name	Varsity-Owned?
All Star Challenge	Yes
American Championships	Yes
American Cheer Power	Yes
American Cheerleaders Association	Yes
Athletic Championships	Yes
National Cheerleaders Association & NDA	Yes
One Up Championships	Yes
Pac West Spirit Group	Yes
Spirit Cheer	Yes
Spirit Festival	Yes
Spirit Sports	Yes
United Spirit Association	Yes
Universal Cheerleaders Association & UDA	Yes
World Spirit Federation	Yes
American Cheer and Dance Academy	No
AmeriCheer & AmeriDance	No
Champion Spirit Group	No
Cheer America Championships	No
Cheer LTD.	No
Cheer Tech	No
Cheersport	No
COA Cheer & Dance	No
Coastal Corporation	No
Elite Cheer Companies	No
Golden State Spirit Association	No
Great Lakes Cheer	No
JAMfest	No
Jamz	No
Mid-Atlantic Cheer	No
Spirit Celebration / Cheer Gyms Association	No
Worldwide Spirit Assoc.	No
Xtreme Spirit	No

Source : USASF_00080543

Notes:

[1] I determined which Worlds Bid Events were owned by Varsity in the 2011-2012 season by supplementing my findings related to Varsity ownership during the alleged class period with communications my team had with Varsity counsel related to the timing of Varsity acquisitions.

EXHIBIT 8

In the Matter Of:

JESSICA JONES vs

VARSITY BRANDS

RANDALL HEEB

January 19, 2023



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
 WESTERN DIVISION

3 JESSICA JONES and)
4 CHRISTINA LORENZEN on)
5 Behalf of Themselves and)
6 All Others Similarly)
7 Situated,)
8 Plaintiffs,)
9)
10 vs.) CASE NO. 2:20-cv-02892-SHL-tmp
11)
12 VARSITY BRANDS, LLC;)
13 VARSITY SPIRIT, LLC;)
14 VARSITY SPIRIT FASHION &)
15 SUPPLIES, LLC; U.S. ALL)
16 STAR FEDERATION, INC.;)
17 JEFF WEBB; CHARLESBANK)
18 CAPITAL PARTNERS LLC; and)
19 BAIN CAPITAL PRIVATE)
20 EQUITY,)
21 Defendants.)

22 ORAL VIDEOTAPED DEPOSITION

23 RANDALL HEEB

24 JANUARY 19, 2023

25 VOLUME 2

1 ORAL VIDEOTAPED DEPOSITION OF RANDALL HEEB, via Zoom
2 and in person, produced as a witness at the instance of
3 the Defendant Varsity Brands, LLC and duly sworn, was
4 taken in the above-styled and numbered cause on the 19th
5 day of January, 2023, from 12:44 p.m. to 7:50 p.m. PST,
6 before Melinda Barre, Certified Shorthand Reporter in
7 and for the State of Texas, reported by computerized
8 stenotype machine, all parties appearing remotely via
9 web videoconference, pursuant to the rules of procedure
10 and the provisions stated on the record or attached
11 hereto.

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1 athletes, right?

2 A. Well, in general they should not include those
3 athletes before or after.

4 Q. But if they did, if the count did include those
5 athletes, you'd want to make sure they were counted in
6 the post-acquisition, correct?

7 A. Well, I may have not pointed out that
8 particular error in Dr. Murphy's analysis; but it also
9 would be a concern.

10 Q. Well, you claim in your report that
11 pre-acquisition data did not include the dance studio or
12 youth teams, right?

13 A. My pre-acquisition data does not. That was my
14 intention.

15 Q. But you didn't provide a source for that in
16 your report?

17 A. A source for the ...

18 Q. Omission of those teams from your data.

19 MS. SPIEGEL: Objection to form.

20 A. I believe I counted the pre- and
21 post-competitive cheer, not the dance or jazz or the
22 other events.

23 BY MS. NYONG'O:

24 Q. The acquired events, they included dance and
25 youth teams before pre-acquisition, right?

1 A. I'd have to go back and look.

2 Q. You have no reason to believe these teams
3 weren't included in pre-acquisition data, do you?

4 A. Once again, I'd have to go back and look.

5 Q. So if it was included in the pre-acquisition
6 data and you chose not to include it in the
7 post-acquisition data, that would not be consistent,
8 would it?

9 A. To the extent that the -- that the counts -- to
10 look at the effect both on continued events and also on
11 discontinued events, you'd like to look at only the
12 cheer, competitive cheer events, and not the other
13 events.

14 Q. If Varsity acquired an event and continued it,
15 then participation following the acquisition should be
16 considered in your analysis, right?

17 MS. SPIEGEL: Objection to form.

18 A. It depends on what you're doing. But what
19 Dr. Murphy is doing is counting the same events, to the
20 extent that those were continued -- and I have issues
21 with Dr. Murphy's count of those. But even if I accept
22 Dr. Murphy's counts, Dr. Murphy has excluded an entire
23 class of competitive cheer participants from his
24 analysis of the pre- versus the post-acquisition.

25 In particular, he has ignored the

1 able to earn a Worlds bid, right?

2 A. Yeah. They have to have -- they have to be
3 awarded a World bid when a World bid is available, and
4 that involves an exercise that includes the success of
5 the event prior to that.

6 Q. Did you attempt to isolate what price effects
7 you found resulted from the alleged conspiracy with
8 USASF as opposed to the other challenged conduct?

9 A. No.

10 Q. In your report you criticize USASF rules that
11 purportedly restrict new entry and competition among
12 events, right?

13 A. Can you point me to the specific paragraph that
14 you're discussing.

15 Q. Sure. So in your opening report in
16 paragraph 205 you talk about the proximity limitations
17 for World bid events, for example.

18 A. Yes.

19 Q. Okay. And you opine that Varsity engaged in
20 counter-programming and placed its own events near other
21 event producers' World bid events, right?

22 A. So Varsity referred internally to these as
23 attack events and the attack events -- I don't know that
24 they were just limited to World bid events, but they're
25 certainly discussed in the context of World bid events.

328

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Court File No. 0:18-cv-01776-JRT-HB

IN RE:

PORK ANTITRUST LITIGATION

REPORTER'S CERTIFICATE

ORAL DEPOSITION OF RANDALL HEEB

January 19, 2023

I, Melinda Barre, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, RANDALL HEEB, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
Heather Nyong'o.

That a copy of this certificate was served on all
parties and/or the witness shown herein
on _____.

I further certify that pursuant to FRCP Rule

329

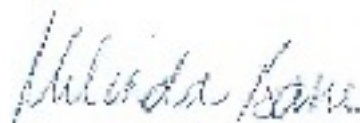
30(f)(1), that the signature of the deponent:

_____ was requested by the deponent or a party before the completion of the deposition and that the signature is to be before any notary public and returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor:

_____ was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me on this, the _____ day of _____, 2023.



Melinda Barre
Texas CSR 2192
Expiration: 12/31/23

330

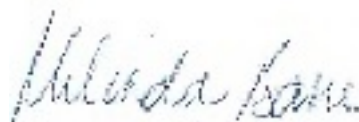
1 COUNTY OF HARRIS)

2 STATE OF TEXAS)

3 I hereby certify that the witness was notified on
4 _____ that the witness has 30 days or (____
5 days per agreement of counsel) after being notified by
6 the officer that the transcript is available for review
7 by the witness and if there are changes in the form or
8 substance to be made, then the witness shall sign a
9 statement reciting such changes and the reasons given by
10 the witness for making them;

11 That the witness' signature was/was not returned as
12 of _____.

13 Subscribed and sworn to on this, the _____ day of
14 _____, 2023.

15
16
17 
18

19 _____
20 Melinda Barre
21 Texas CSR 2192
22 Expiration: 12/31/23
23
24
25

ERRATA SHEET FOR DEPOSITION TRANSCRIPT

Case: *Jessica Jones, et. al. v. Varsity Brands, LLC, et. al.*; Case No. 2:20-cv-02892

Dep. Date: January 19, 2023

Deponent: Randal Heeb, Ph.D.

Global Change:

1. Change spelling of expert's name from "Randall Heeb" to "Randal Heeb." The instances that I have found of the misspelling are on the title pages of the deposition transcripts; in the headers of the deposition transcripts; in the description on p. 107; and in the notarized declaration on p. 327. The first name is spelled correctly in other instances.

Page	Line(s)	Now Reads	Should Read	Reason
13	5	"liable"	"libel"	Transcription error
17	12	"Eaton Maritor"	"Eaton v. ZF Meritor"	Transcription error
21	12	"James Arenoff"	"James Aronoff"	Name misspelled
25	21	"Arenoff"	"Aronoff"	Name misspelled
26	10	"Matthew Holle"	"Matthew Hoelle"	Name misspelled
26	13	"Dr. Holle"	"Dr. Hoelle."	Name misspelled
26	24	"Matthew Holle"	"Matthew Hoelle"	Name misspelled
30	10	"Yes"	"No"	Correction
40	13	"briefcase background"	"brief case background"	Transcription error
53	11	"pair of"	"paragraph"	Transcription error
67	22	"miss-answered"	"misanswered."	Transcription error
102	12	"not constant"	"non consistent"	Transcription error
103	18	"distance events"	"distant events"	Transcription error
120	2	"High School 8"	"High School Finals"	Correction
122	21	"and less average"	"and less expensive"	Correction
152	20	"divided by 21.1"	"divided by 91.1"	Correction
155	13	"second"	"secondary"	Transcription Error
203	20	"electively"	"effectively"	Transcription Error

Page	Line(s)	Now Reads	Should Read	Reason
216	2	"probably isn't"	"probably is"	Correction
246	19	"That's correct"	"My previous answer is correct. My estimate of overcharges reflects the payment by both schools and gyms"	Clarification
328	n/a	Court Reporter's Certification is for the wrong case.	n/a	n/a

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 3, 2023 in Donnelly, ID.



Randal Heeb, Ph.D.

EXHIBIT 9

In the Matter Of:

JESSICA JONES vs

VARSITY BRANDS

JANET NETZ

January 17, 2023



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

4	JESSICA JONES, et al.,)	
)	
5	Plaintiffs,)	
)	
6	v.)	Case No.
)	2:20-cv-02892-SHL-tmp
7	VARSITY ZBRANDS, LLC, et)	
	al.,)	
8)	
)	
9	Defendants.)	
)	

10

11 Videotaped Deposition of JANET S. NETZ, PHD

12 San Francisco, California

13 Tuesday, January 17, 2023

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20 Reported Stenographically by

21 Michael P. Hensley, RDR - CA CSR No. 14114

22

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JESSICA JONES, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	2:20-cv-02892-SHL-tmp
VARSITY ZBRANDS, LLC, et)	
al.,)	
)	
)	
Defendants.)	
)	

Videotaped Deposition of JANET S. NETZ, PHD,
commencing at the hour of 9:40 A.M. and concluding
at the hour of 7:10 P.M. on Tuesday, January 17,
2023, at the location of Cleary Gottlieb Steen &
Hamilton LLP, 6250 California Street, Suite 2000,
San Francisco, California 94108, before
Michael P. Hensley, Registered Diplomate Reporter,
Certified Shorthand Reporter No. 14114, in and for
the State of California.

13

1 A. I'd guess about 12 to -- 12.

2 Q. Okay. And how many of those approximately
3 23 cases that were antitrust cases in which you've
4 served as an expert witness were merger cases or
5 involved mergers?

6 A. None.

7 Q. So this is the first time you've been
8 involved in an antitrust case that involves mergers?

9 A. No. I wouldn't say that, but they weren't
10 merger cases. It's not brought under Clayton
11 Section 7. Not to say mergers haven't been
12 involved, but it was not a merger case.

13 Q. What's your field of expertise?

14 A. Industrial organization.

15 Q. And can you briefly tell us what
16 "industrial organization" means.

17 A. Industrial organization is the field of
18 economics that studies how firms are organized and
19 how they interact with each other as well as how
20 they interact with consumers and suppliers.

21 Q. Is that what your PhD is in?

22 A. It's in economics.

23 Q. Are you an econometrician?

24 A. I'm an applied econometrician.

25 Q. Did you do any economic -- econometric

14

1 analysis in support of your opening report in this
2 case?

3 A. No, I did not.

4 ATTORNEY KENNEDY PARK: Can I have
5 Exhibit 1, please.

6 (Exhibit 1 was marked for identification.)

7 ATTORNEY KENNEDY PARK: I'm handing to the
8 court reporter what's been marked as Exhibit 1.

9 ATTORNEY SPIEGEL: Excuse me, Jenn. Do
10 you have copies?

11 ATTORNEY KENNEDY PARK: Yeah, we do.
12 Yeah, just give us a second.

13 THE COURT REPORTER: For the future, feel
14 free to pass that directly to the witness.

15 ATTORNEY KENNEDY PARK: Great. Thank you.
16 And thank you to the court reporter for
17 having labels preprepared.

18 ATTORNEY SPIEGEL: Thank you.

19 ATTORNEY KENNEDY PARK: For folks on Zoom,
20 we will drop the exhibit into the chat if you will
21 give us a moment or two.

22 Counsel, you have a copy?

23 ATTORNEY SPIEGEL: Yes, thank you.

24 BY ATTORNEY KENNEDY PARK:

25 Q. I've put before you what I've labeled as

CERTIFICATE OF SHORTHAND REPORTER

I, Michael P. Hensley, Registered Diplomate
Reporter for the State of California, CSR No. 14114,
the officer before whom the foregoing deposition was
taken, do hereby certify that the foregoing
transcript is a true and correct record of the
testimony given; that said testimony was taken by me
stenographically and thereafter reduced to
typewriting under my direction; that reading and
signing was not requested; and that I am neither
counsel for, related to, nor employed by any of the
parties to this case and have no interest, financial
or otherwise, in its outcome.



Michael P. Hensley, CSR, RDR

ERRATA SHEET FOR DEPOSITION TRANSCRIPT

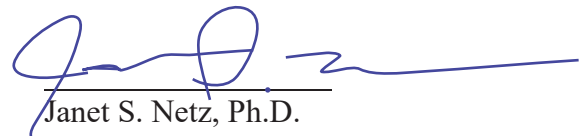
Case: *Jessica Jones, et. al. v. Varsity Brands, LLC, et. al.*; Case No. 2:20-cv-02892

Dep. Date: January 17, 2023

Deponent: Janet S. Netz, Ph.D.

Page	Line(s)	Now Reads	Should Read	Reason
18	24-25	I did not reply on any communications with Dr. Heeb.	I did not <i>rely</i> on any communications with Dr. Heeb.	Transcription
22	13-14	Have you've seen a final copy of either of Dr. Singer or Szymanski's reports?	Have <i>you</i> seen a final copy of either of Dr. Singer or Szymanski's reports?	Transcription
33	2	Jeff Web	Jeff <i>Webb</i>	Transcription
179	5	From \$33 to \$33	"\$30 to \$33" or "\$33 [sic] to \$33	Clarification

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 24, 2023 in Oakland, CA.



Janet S. Netz, Ph.D.

EXHIBIT 10

In the Matter Of:

Jones v

Varsity

JEN MAKI

January 23, 2023



1

HIGHLY CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY
UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TENNESSEE

JESSICA JONES, et al.,)

Plaintiffs,)

VS.)

VARSIY BRANDS, LLC, et al.,)

Defendants.)

NO. 2:20-cv-02892-SHL-tmp

-- H I G H L Y C O N F I D E N T I A L --

FOR ATTORNEYS' EYES ONLY
VIDEOTAPED VIDEO CONFERENCE DEPOSITION OF
JEN MAKI, PH.D.
MONDAY, JANUARY 23, 2023

STENOGRAPHIC REPORTER: CHRISTA YAN, CSR NO. 14316

1 Varsity TV. And I just want to confirm that that
2 calculation is based on 20,000 subscribers, multiplied by
3 \$30 a month in subscription fees?

4 A This is a very loose example and not something
5 that I think we could place a whole lot of confidence in.
6 As I note, it's just a back-of-the-envelope calculation.

7 MR. KAISER: I have no further questions. Thank you.

8 THE WITNESS: Thank you.

9 MR. KAISER: Some of the other lawyers may have
10 questions.

11 EXAMINATION

12 BY MS. RICCIO:

13 Q Hi, Dr. Maki. My name's Nicole Riccio. I'm the
14 attorney for U.S. All Star Federation. And I just have a
15 few more questions.

16 I believe you said earlier, that a lot of the
17 background information you included was really just for
18 context for your damages opinion; is that right?

19 A That's correct.

20 Q Okay. And so just to be clear, you're not
21 offering an independent opinion regarding whether the
22 rules, decisions, or policies of USASF that are at issue
23 were anticompetitive?

24 A That is correct.

25 Q Okay. In paragraph 29 of your opening report,

REPORTER'S CERTIFICATE

I, Christa Yan, CSR No. 14316, do hereby declare:
That, prior to being examined, the witness named in
the foregoing deposition was by me duly sworn remotely
pursuant to Section 30(f)(1) of the Federal Rules of Civil
Procedure, and the deposition is a true record of the
testimony given by the witness as accurately as possible.
That said deposition was taken down by me in shorthand at
the time therein named and thereafter reduced to text
under my direction.

That said witness was requested to review the
transcript and make any changes to the transcript as a
result of that review pursuant to Section 30(e) of the
Federal Rules of Civil Procedure.

_____No changes have been provided by the witness during
the period allowed.

_____The changes made by the witness are appended to the
transcript.

_____No request was made that the transcript be reviewed
pursuant to Section 30(e) of the Federal Rules of Civil
Procedure.

I further declare that I have no interest in the event
of the action. I declare under penalty of perjury under
the laws of the United States of America that the
foregoing is true and correct.

WITNESS my hand this 2nd day of February 2023.



Christa Yan, CSR NO. 14316

ERRATA SHEET FOR DEPOSITION TRANSCRIPT

Case: *Jessica Jones, et. al. v. Varsity Brands, LLC, et. al.*; Case No. 2:20-cv-02892

Dep. Date: January 23, 2023

Deponent: Jen Maki, Ph.D.

Page	Line(s)	Now Reads	Should Read	Reason
9	12	“January 28, 2022”	“June 20, 2022”	Transcription error
13	16	“Hall”	“Hoelle” – global correction	Misspelling of name
16	5	“direct”	“director”	Transcription error
28	21	“till”	“still”	Transcription error
35	5	“as”	“then”	Transcription error
40	24	“same”	“seen”	Transcription error
45	22	“required”	“acquired”	Transcription error
49	20	“It was Dan Rubinfeld.”	It was Dan Rubinfeld, he was the testifying expert for EVR (electronic vehicle registration), part of the DMS case. Reason: Providing clarification/additional detail	Providing clarification/additional detail
57	17	“relating”	“referring”	Transcription error
60	21	“I think it was monetary”	“I think it was not monetary”	Transcription error
67	16	“Correct.”	“Correct, it is based on the Customer location.”	Misstatement
123	2	“That”’s correct. It’s ship to or bill to.”	“Correct, it is based on bill to or Customer location.”	Misstatement
123	13	“That”’s correct.”	“The splits are based on bill to or Customer location.”	Misstatement
123	17	“Correct.”	“No, apparel is based on the bill to address.”	Misstatement
146	14	“may”	“say”	Transcription error

Page	Line(s)	Now Reads	Should Read	Reason
148	14	“a gym may send to send its All Star teams”	“a gym may send its All Star teams”	Transcription error
157	18	“2028”	“2018”	Transcription error
222	5	“roommates”	“room rates”	Transcription error
249	24	“shipped”	“billed”	Transcription error

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 24, 2023 in Scottsdale, Arizona.

See attached.
Jen Maki, Ph.D.

1 READ/SIGN DEPOSITION OF: Jen Maki

2 DATE OF DEPOSITION: January 23, 2023

3 IN THE MATTER OF: Jones v Varsity

4 DO NOT WRITE ON THE DEPOSITION ITSELF

5 Page Line Changes or corrections and reason

6

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22 I have inspected and read my deposition and
23 have listed all changes and corrections above,
24 along with my reason therefor.

DATE: 02/24/2023

SIGNATURE: 

EXHIBIT 11

In the Matter Of:

Jones vs

Varsity Brands

JAMES ARONOFF

January 13, 2023



1

VOLUME 1

2

PAGES: 1-179

3

EXHIBITS: See Index

4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

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JESSICA JONES, et al.,

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Plaintiffs,

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v.

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VARSITY BRANDS, LLC; et al.,

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Defendants.

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VIDEOTAPED DEPOSITION of JAMES H. ARONOFF

16

- CONDUCTED BY VIDEOCONFERENCE -

17

Friday, January 13, 2023

18

9:58 a.m. Eastern Standard Time

19

20

21

22

Michelle Keegan, RMR, CRR

23

Lexitas

24

508-478-9795 ~ 508-478.0595 (Fax)

25

www.LexitasLegal.com

1 So if you understand that and I'm taking
2 as a given that Varsity's current control and
3 conduct of the USASF board is anticompetitive,
4 it's an assumption, my predicate, then how could a
5 recommendation to say "don't do that any more,
6 change the board" need an economic study to -- I
7 mean, yeah, okay, you don't want to create a
8 similar situation.

9 But I think my recommendation says the
10 board should be restructured in such a way and as
11 you can demonstrate the decision-making is fair,
12 is transparent, and that no any one constituent
13 has actual or perceived control of this body. And
14 that's what that sentence says.

15 I mean, it's really a truism on its face.

16 Q. Okay. Just to make sure I understand,
17 though, you don't attempt to quantify the extent
18 to which restructuring USASF's board would have an
19 impact on prices for cheerleading competitions.
20 Right?

21 A. No. And that may or may not be important
22 when determining, you know, how and in what way
23 should these recommendations be actually
24 implemented or put into policies and procedures.

25 So no. In this report, in these reports,

1 I was focused on providing a recommendation for
2 structural relief to the problem presented, the
3 activity or the effect presented, while at the
4 same time and without doing an independent study
5 making sure that the recommendation for structural
6 relief didn't negatively impact other market
7 participants, that the day-to-day activities of
8 most of the market participants wouldn't be
9 affected.

10 Q. Is it your opinion that restructuring
11 USASF's board would result in lower prices for
12 both all-star and school cheer competitions?

13 A. I don't have an opinion. I hadn't looked
14 at that. I mean, I haven't been asked to examine
15 that. I don't have an opinion on that.

16 Q. Okay. Is it -- do you have an opinion on
17 whether restructuring USASF's board would result
18 in increased output in all-star and school
19 competitions?

20 A. No, I don't have an opinion on that.

21 Q. Okay. Do you have an opinion -- with
22 respect to any of the recommendations in your
23 report, do you have an opinion as to whether
24 implementing those recommendations would have --
25 would result in lower prices in any of the

1 all-star or school cheer competition, apparel,
2 camp spaces?

3 A. No. My perspective -- my perspective is
4 related to my core expertise, which is how do
5 institutions make rules to conduct their business
6 in a way that mitigates the likelihood that they
7 will act in an unethical or illegal fashion and
8 create liability that could otherwise be avoided.

9 So in this context, the specific policies
10 that would say how can we mitigate conduct that
11 may be perceived as anticompetitive, were
12 violative of state laws regarding the competition
13 and federal laws regarding competition, it may be
14 appropriate as you're developing the contours of
15 that particular part of the regulations to do a
16 study.

17 Because what you're talking about is
18 comparative. Right? It's looking at the current
19 state and it's looking at -- of affairs and it's
20 looking at allegedly the increased cost to
21 indirect purchasers created by all these
22 anticompetitive activities and comparing it to a
23 market where with some of these recommendations
24 implemented and the nonanticompetitive activity,
25 net is that better for, I guess, consumers in your

1 example.

2 What I'm saying is that was not something

3 I was asked . . .

4 MS. RICCIO: You may have frozen. I don't
5 know about anyone else.

6 MR. SEIDEL: Frozen for me.

7 THE REPORTER: Same here.

8 THE VIDEOGRAPHER: The time is 3:44 p.m.,
9 and we're going off the record.

10 (Off the record 3:44 p.m. to 3:45 p.m.)

11 THE VIDEOGRAPHER: The time is 3:45 p.m.,
12 and we're back on the record.

13 (Record read)

14 THE WITNESS: To do.

15 BY MS. RICCIO:

16 Q. Okay. Was that the complete answer?

17 A. Yeah. To engage in that analysis.

18 Q. Okay. And so you didn't analyze whether
19 it would be -- whether there would be cheaper
20 prices for consumers in the but-for -- strike
21 that.

22 You didn't conduct an analysis of what
23 prices would be for consumers in the world where
24 your recommendations were implemented. Is that
25 fair?

1 A. I didn't conduct any studies around the
2 cost of implementing my recommendations to anyone,
3 including consumers.

4 MS. RICCIO: Okay. I have no further
5 questions. I don't know if anyone else does.

6 Thank you, Mr. Aronoff.

7 MR. GAFFNEY: No questions from me on
8 behalf of Mr. Webb.

9 MR. KAISER: No questions from me.

10 MR. SEIDEL: We're done.

11 THE VIDEOGRAPHER: This concludes the
12 deposition of Mr. James Aronoff. The time is
13 3:47 p.m. Thank you very much.

14 (Off the record at 3:47 p.m.)

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

I, Michelle Keegan, Registered Merit Reporter
and Notary Public in and for the Commonwealth of
Massachusetts, do hereby certify that JAMES H.
ARONOFF, the witness whose deposition is
hereinbefore set forth, was duly sworn by me and
that such deposition is a true record, to the best
of my ability, of the testimony given by the
witness.

I further certify that I am neither related to
or employed by any of the parties in or counsel to
this action, nor am I financially interested in
the outcome of this action.

In witness whereof, I have hereunto set my hand
and seal this 19th day of January, 2023.



Notary Public

My commission expires:

May 15, 2026

ERRATA SHEET FOR DEPOSITION TRANSCRIPT

Case: *Jessica Jones, et. al. v. Varsity Brands, LLC, et. al.*; Case No. 2:20-cv-02892

Dep. Date: January 23, 2023

Deponent: James H. Aronoff

Page	Line	Now Reads	Should Read	Reason
19	10	C-suite	C-suite executive	Transcription
43	6	C-suite	C-suite executive	Transcription
51	22	Nondirectly	None directly	Transcription
69	19	Whereas as	Whereas	Transcription
74	1	State of play	stay to play	Transcription
74	17	State of play	stay to play	Transcription
75	3	State of play	stay to play	Transcription
75	8	State of play	stay to play	Transcription
75	9	State of play	stay to play	Transcription
173	12	and that no any one constituent	and that not any one constituent	Transcription

I declare under penalty of perjury that the foregoing is true and correct. Executed on
February 24, 2023 in San Francisco, California.

/s/ James Aronoff
James H. Aronoff

EXHIBIT 12

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

Appendix B:
Materials Relied Upon

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

LEGAL FILINGS

Jessica Jones, Michelle Velotta, and Christina Lorenzen on Behalf of Themselves and All Others Similarly Situated, v. Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashion & Supplies, LLC; U.S. All Star Federation, Inc.; Jeff Webb; Charlesbank Capital Partners LLC; and Bain Capital Private Equity, Complaint, December 10, 2020

National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma and University of Georgia Athletic Association, Syllabus, Case No. 83-271 (1984)

EXPERT REPORTS (Including materials referenced within)

Expert Report of Jonathan M. Orszag, *Fusion Elite All Stars, et al., v. Varsity Brands, LLC, et al.*, September 23, 2022

Expert Damages Report of Jen Maki, June 20, 2022

Expert Report of James H. Aronoff, June 20, 2022

Expert Report of Janet S. Netz, Ph.D., June 20, 2022

Expert Report of Randal Heeb, Ph.D., June 20, 2022

DEPOSITIONS (Including exhibits referenced within)

Deposition of Ali Stangle, March 30, 2022

Deposition of Amy Clark, March 31, 2022

Deposition of Brian Elza, November 16, 2021

Deposition of Jamie Parrish, March 3, 2022

Deposition of Jeffrey Fowlkes, April 5, 2022

Deposition of Jim Chadwick, April 15, 2022

Deposition of John Newby, March 23, 2022

Deposition of Lynn Singer, March 2, 2022

Deposition of Rebecca Foster, December 21, 2021

Deposition of Sarah Minzghor, December 17, 2021

Deposition of Steve Peterson, April 4, 2022

Deposition of Steve Peterson, March 9, 2022

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INTERVIEWS

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Interview with Steve Peterson, September 20, 2022

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BATES-STAMPED DOCUMENTS (Listing beginning Bates only)

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EXHIBIT 13

Operation Catapult: *Bain Capital update*

Monday, November 19th, 2018

VARSITY

BRANDS

DRAFT

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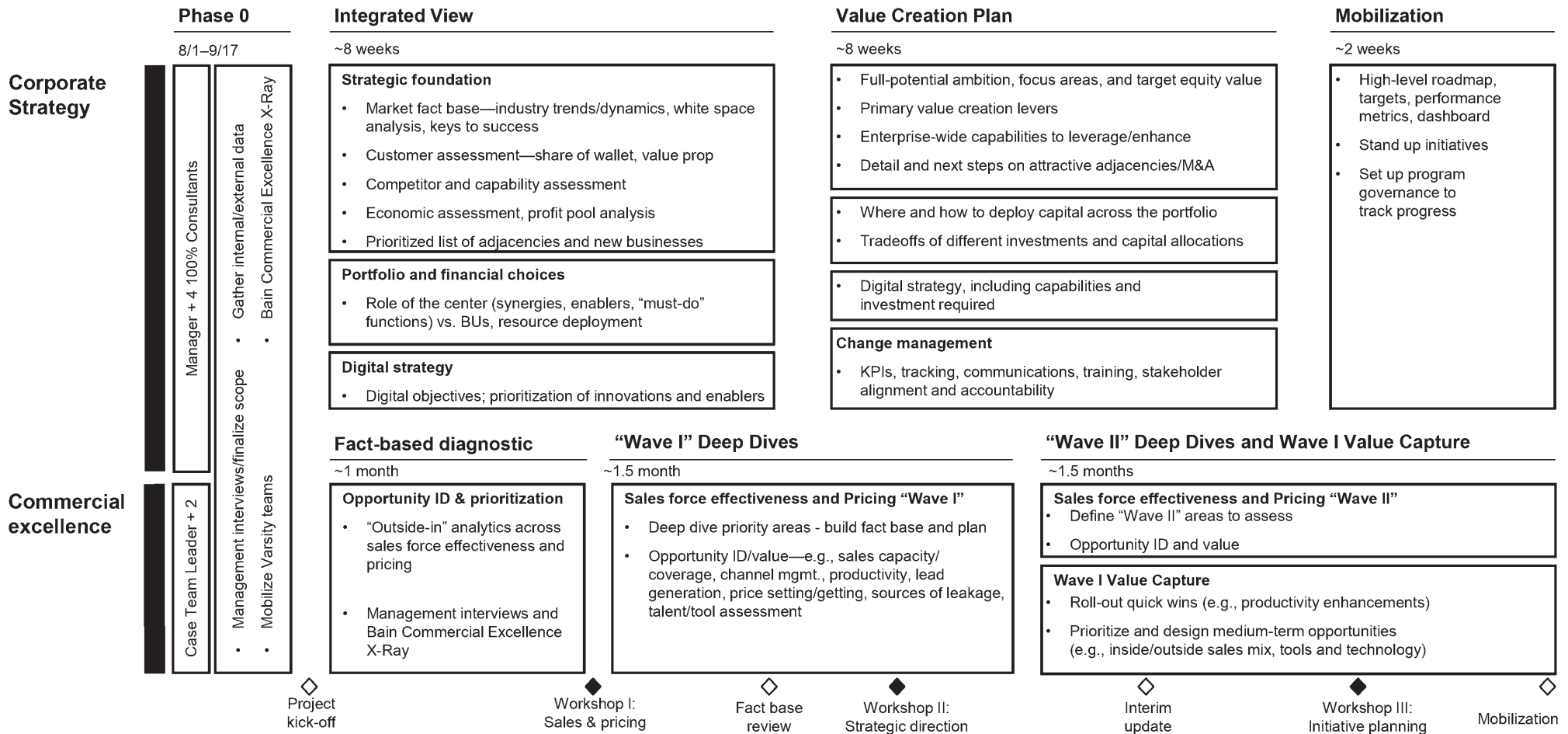
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Project objectives

- Develop an **integrated 3–5 year corporate strategy** that:
 - **Prioritizes growth opportunities** across both current and potential new businesses
 - Defines the company's **overall portfolio strategy**, including role of the center, where/how to invest for growth, and cross-business growth opportunities and enablers
 - Determines both attractive **organic new business opportunities and potential M&A moves**
 - Describes the company's **path to equity value creation**—primary levers and highest ROI actions
- Develop a clear **digital strategy**, leveraging technology to provide the right end-to-end experience for customers and create sustained advantages against both current and future competitors
- Jump start efforts to drive near-term profitable growth through increased **salesforce effectiveness** and **optimized pricing**; define and deploy best practices across the portfolio
- Develop an integrated, focused, and pragmatic Varsity-wide value creation plan that management can align around, and mobilize the entire organization against, to **deliver results**

Project approach



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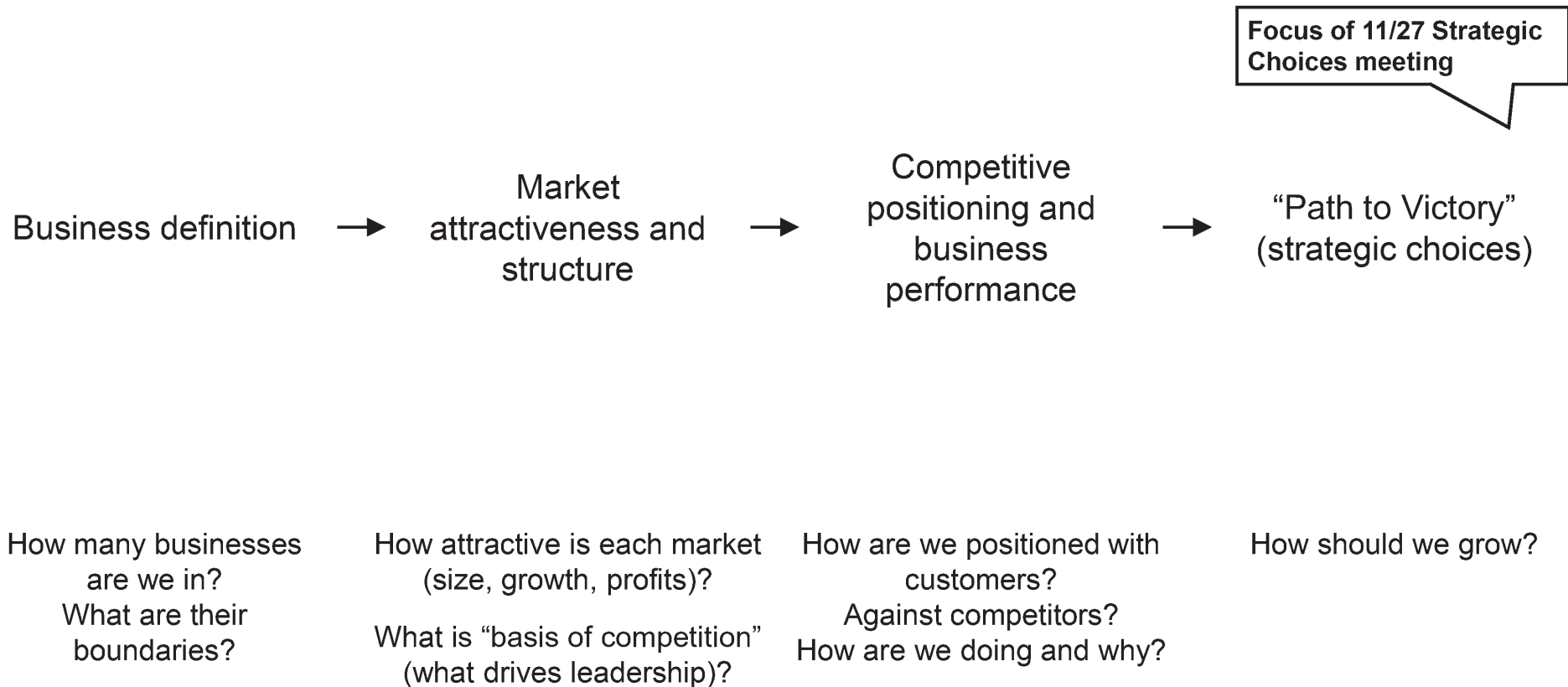
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Meeting roadmap – next week we will discuss Strategic Choices with the Varsity LT

1a. Digital workshop	1b. Commercial Excellence	2. Strategic Foundation	3. Strategic Choices	4. Strategy review/ initiative planning	5. Mobilization
Fri, Oct 5 th	Mon, Oct 22 nd	Tues., Nov 6 th	Tues., Nov 27 th	Wed, Dec 12 th (Orlando)	Tues., Jan 15 th
<i>Align on our ‘digital departure’ and discuss potential priorities towards our ‘digital destination’</i>	<i>Identify the most important SFE and pricing opportunities for immediate action</i>	<i>Align on the facts across all of Varsity’s businesses and discuss the most promising opportunities for growth and value creation</i>	<i>Prioritize the opportunities that we will go after as a company (i.e. start, stop, and accelerate)</i>	<i>Set our strategy and understand implications for our organization</i>	<i>Agree on the ‘how’ and mobilize our business</i>

Our analytic path towards strategic choices...

Covered with Varsity on Nov 6



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High level messages from the corporate strategy work

Varsity Brands is operating in 5+ businesses...

- Based on “discoverable” business boundaries, we believe Varsity Brands operates in 5+ businesses: Sports apparel & equipment (BSN), Cheer apparel/camps/competitions (Spirit), Yearbooks, Scholastic (e.g. cap & gown, jewelry), and B2C (may be more than 1 business)

...in which there is an incredible amount of opportunity (differentially within BSN)...

- BSN, Spirit, and Yearbook generate significant RONA (~700%, ~300%, and ~100%, respectively)
- BSN has significant upside – specifically in SFE/Pricing, going deeper into current accounts (more sports, women’s, etc.), and capturing geographic whitespace and greenfield accounts through rep hiring
- Spirit is reaching a ceiling in current business; upside by expanding the addressable market (local competitions, fundraising, reducing travel expenses) and “recreating the magic” in near-in adjacencies such as Dance and Band
- Yearbook is at risk due to technology issues, but plans are in place to preserve profit in this slowly declining market
- Scholastic has challenging market environments and would likely require significant investments in technology and new product development to truly inflect the trajectory (with minimal upside, particularly relative to BSN and Spirit)
- All BUs are dabbling in B2C today; a clear question as to whether Varsity should be in B2C (and if so, what would it take, likely requiring buying assets and capabilities)

...and a few things we “must get right” to win

- Across the board, our customers tell us that reliability and on-time delivery is the #1 key purchase criteria and Varsity is underperforming (industry-wide issue, but Varsity gets lower marks)
- Some functions may be raised to the center to drive discipline and support growth – Sales Ops, Digital, and Cost/Procurement are in consideration (among others) – though recognize these are separate businesses

A G E N D A**Business definition**

BSN overview

Varsity Spirit overview

Yearbook overview

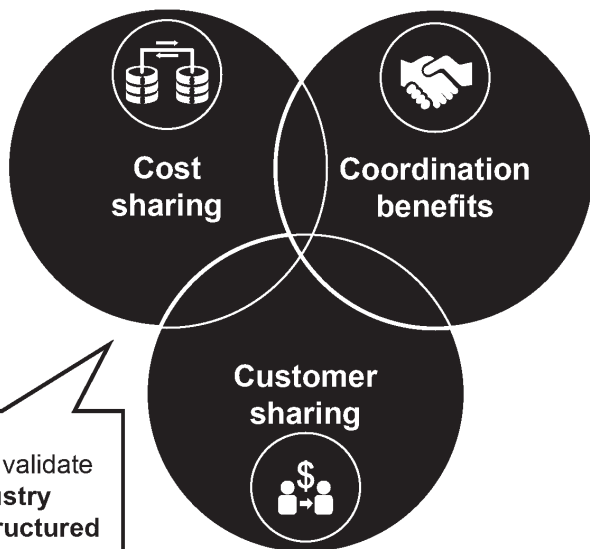
Scholastic / College overview

Direct to consumer

Discussion: Initial prioritization and key strategic choices

Key principles of business definition

Boundaries depend on degree of cost sharing, coordination benefits and customer sharing



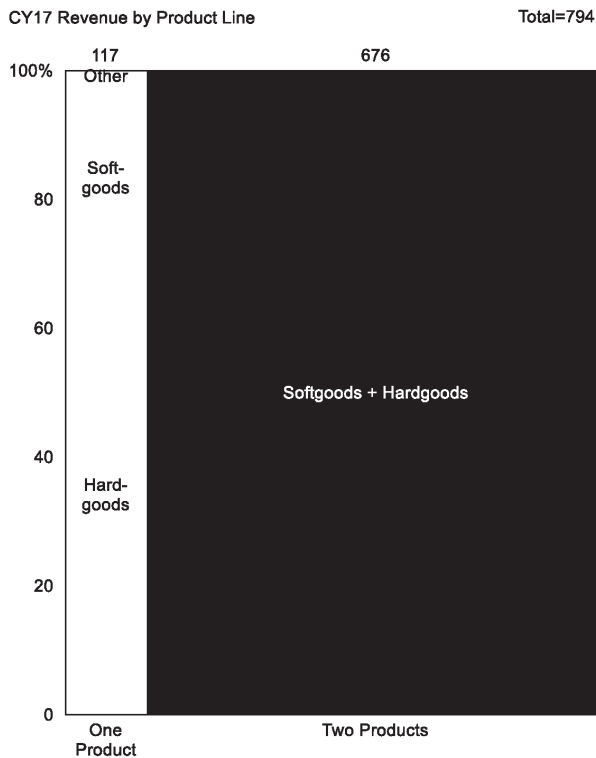
Litmus test: validate
vs. how industry
peers are structured

Learnings over time on business definition

- Boundaries exist because of distinct customer needs and/or **compelling business economics** within the boundary
- Market **boundaries** are **discovered** not **decided**
- Boundaries are **not fixed**, but **continuously evolving**
- It is hard to do strategy if you don't know what they are!

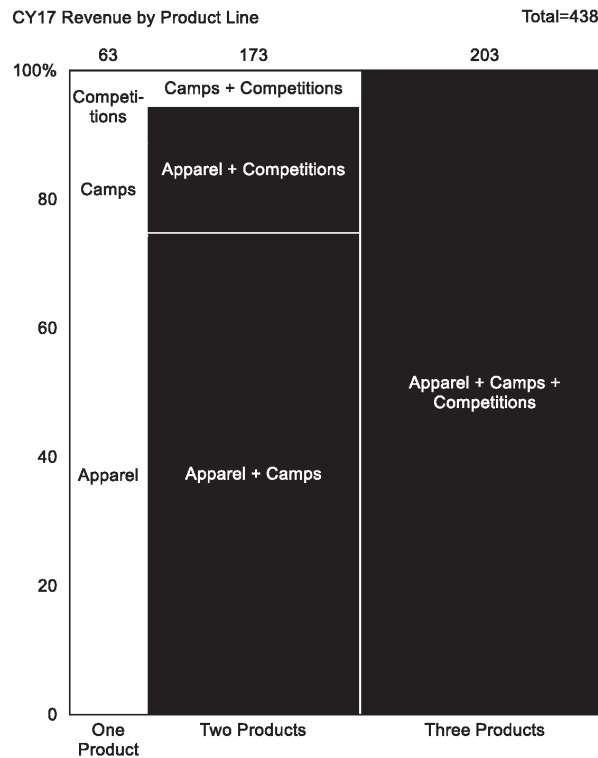
Customer sharing: Within the major 3 divisions, there is typically a high amount of customer sharing; though Yearbooks and Scholastic/College show differences

BSN: Apparel and Hard goods have high overlap

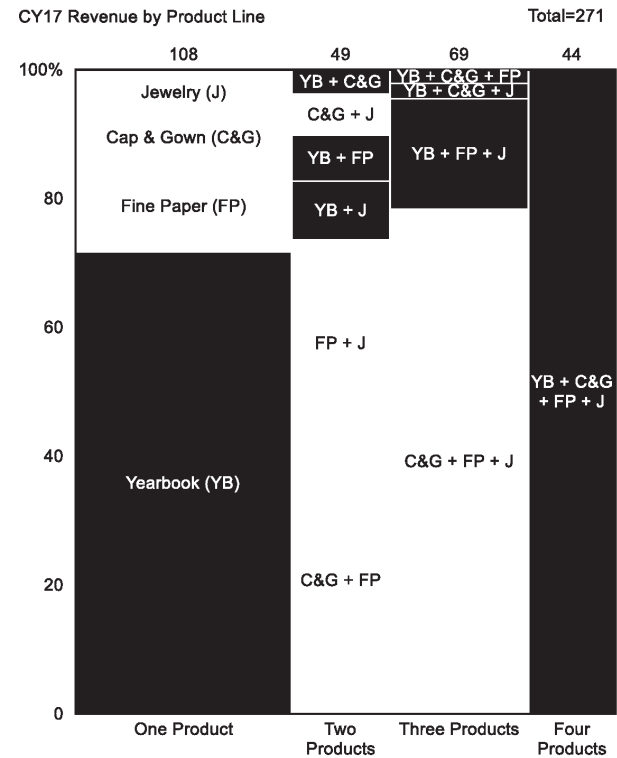


Source: Company internal data

Spirit: Apparel, Competitions, and Camps all have high overlap



Herff Jones: Yearbook have LOW overlap with rest of achievement



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Cost sharing: BSN goes to market with 1 sales force (mix of inside and outside), VS collaborates across product lines and HJ has 3 separate sales forces

BSN Sports

APPAREL & EQUIPMENT

- Sales Pros assigned to schools to sell all products and all product categories; supported by inside sales
 - Outbound telesales
 - Inbound call center
 - Web/digital
 - Bid

Varsity Spirit

APPAREL

- Network of RSMs/ reps cover schools
- Separate RSM and 39 reps cover All Star

CAMPS

- State Directors cover all camps

COMPETITIONS

- All Star Event Advisors

Herff Jones

YEARBOOK

- Reps work primarily with Yearbook Advisers in schools

SCHOLASTIC (K-12)

- Independent sales representatives for K-12 customers

SCHOLASTIC (College)

- Independent sales representatives for College customers

Direct-to-consumer

Sideline Store

- Digital only channel for Sideline Store – does not have reps

Fan Cloth

- Inside reps to sell coaches on running a campaign; limited selling or influencing of ultimate student/parent purchasing

Outside and inside sales costs are shared across apparel and equipment

Separate sales forces that collaborate across product lines

No sharing of costs between Yearbook, Scholastic (K-12) and Scholastic (College) sales forces today

Digital only costs – limited FTE costs

My Team Shop and Sideline Store have key differences across products, customers, and business models that lead to different business definitions



Key products

- In-game (and practice) sports apparel
 - Performance oriented
 - Often customized

- School / sport appreciation gear
 - Designed to show support – not to be game / practice worn

Key customers (buyers of products)

- Coaches are the designers and approvers of gear

- Parents / students / fan of the team (school) can buy (and sometimes design) gear

Business model

- Marketed as an extension of the BSN Sales Pro (can be used without the Sales Pro)

- Sideline store does not need to be affiliated with a Sales Pro
- Fan Cloth sells through a fundraising platform



Likely a “Channel” for BSN



Separate businesses...
TBD on if within Varsity Brands or within the BUs

Our business definition would assert that Varsity Brands operates in 5 distinct businesses

1




Apparel
(includes footwear)

Hard goods



2




Apparel






Camps

3





Yearbook


4

Scholastic/College Jewelry



Cap & Gown



Fine Paper

5

DTC





BSNsports.com

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A G E N D A

Business definition

BSN overview

Varsity Spirit overview

Yearbook overview

Scholastic / College overview

Direct to consumer

Discussion: Initial prioritization and key strategic choices

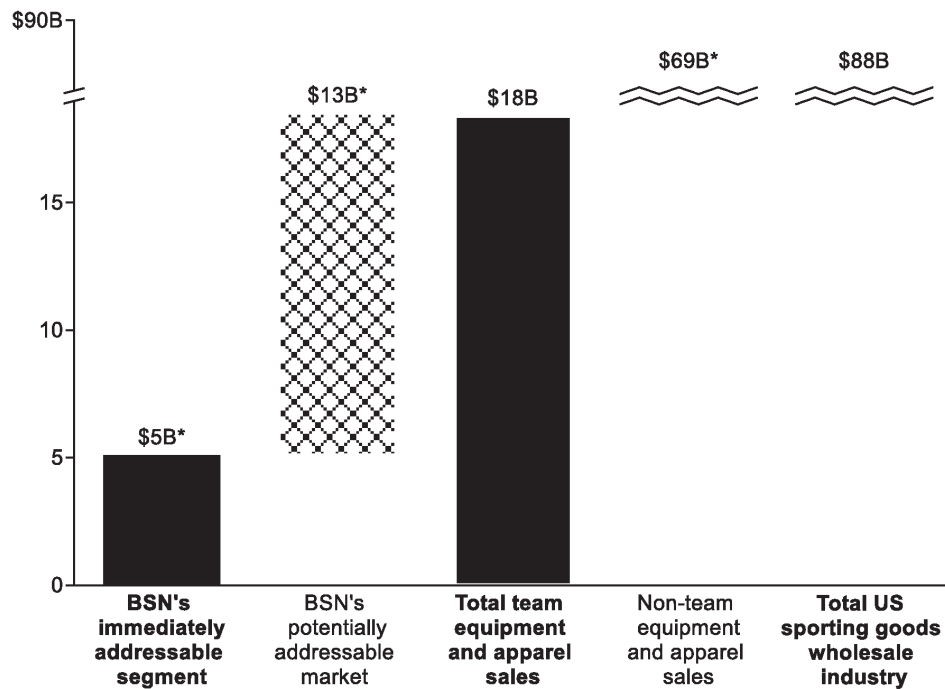
BSN serves the ~\$5B team sports apparel and equipment segment within US sporting goods that is growing 2-3% per year

MARKET ATTRACTIVENESS

/ PRELIMINARY

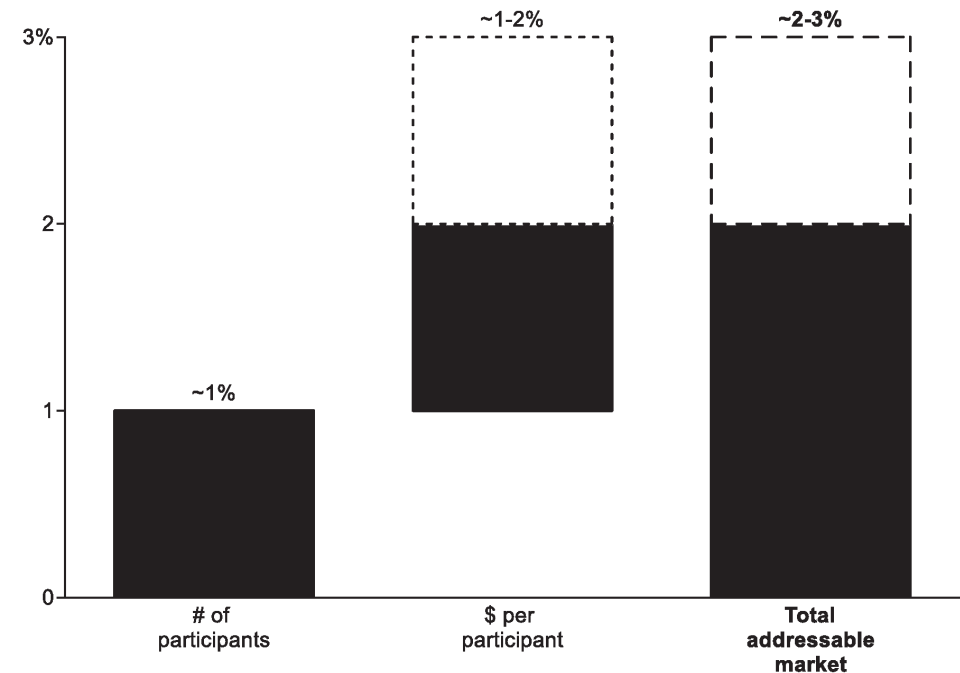
BSN's market is ~\$5B...

Estimated industry size (2017)



...and is growing at 2-3% per year

Team sports uniforms and equipment growth



*Note: \$5B includes sports apparel and equipment purchased in the "team environment"—funded via school budget, booster donations/fundraising, pay-to-play fees, or online team shops; \$13B includes spend for team apparel/equipment not purchased through the team environment and team spend at large colleges; \$69B includes all non-team related sports apparel and equipment spend

Source: SFIA Manufacturing Manufacturers' Sales by Category Report (2017); NFHS Sports Participation Survey 2006-2017; NSGA Historical Participation 2017; NSGA Historical Sporting Goods Report (2017); industry participant interviews

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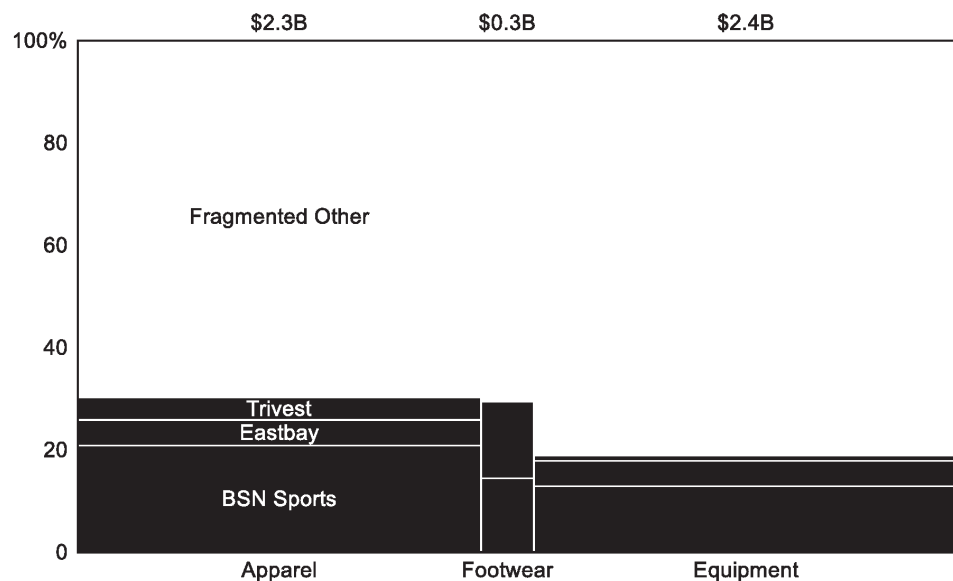
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BSN has ~19% share of the overall market with a differential focus on apparel and High Schools

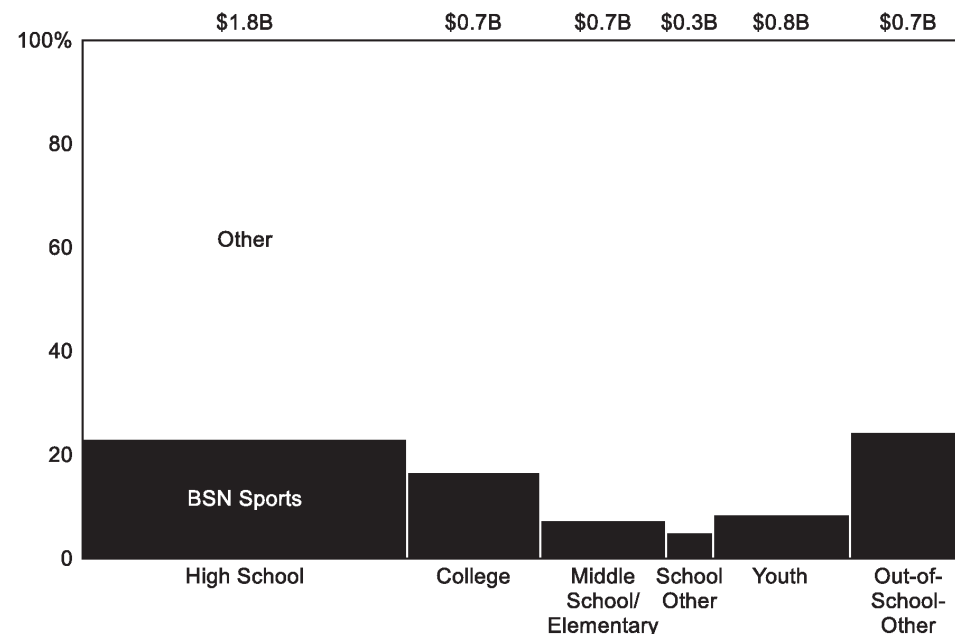
COMPETITIVE POSITION

/ PRELIMINARY

2017 Revenue (\$B) Total = ~\$5B



2017 Revenue (\$B) Total = ~\$5B



BSN is one of few competitors with scale in the highly fragmented team sports market

Note: "Out-of-school other" includes Church, Government, and Camp; "School other" includes District; segment size excludes corporate and consumer direct
 Source: Industry participant interviews; BSN 2017 internal data

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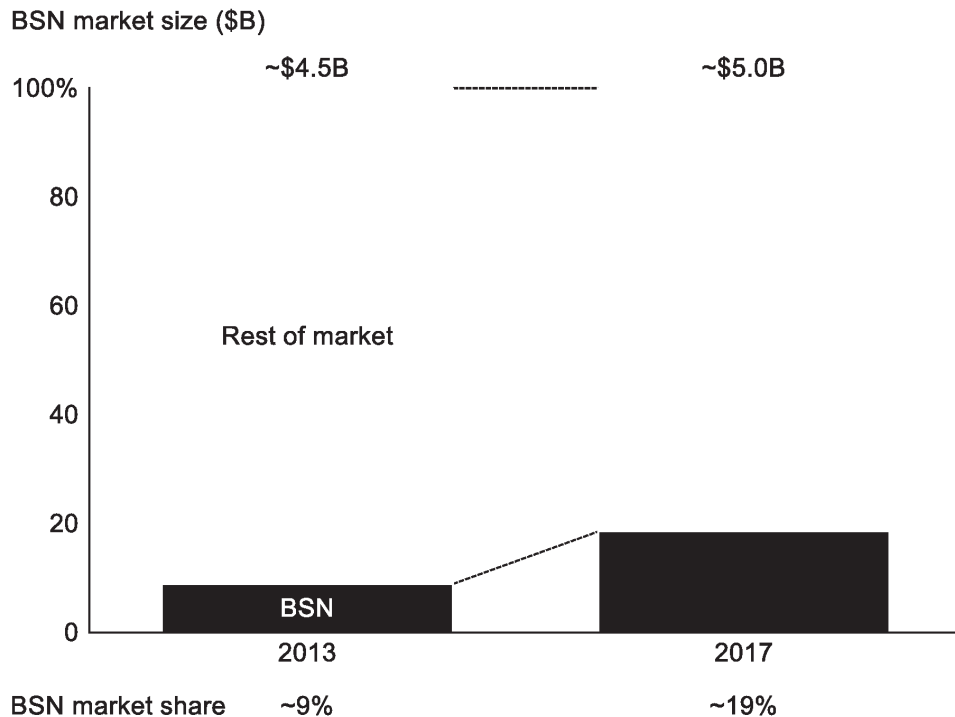
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BSN doubled its market share from 2014 to 2017, mostly through adding reps...

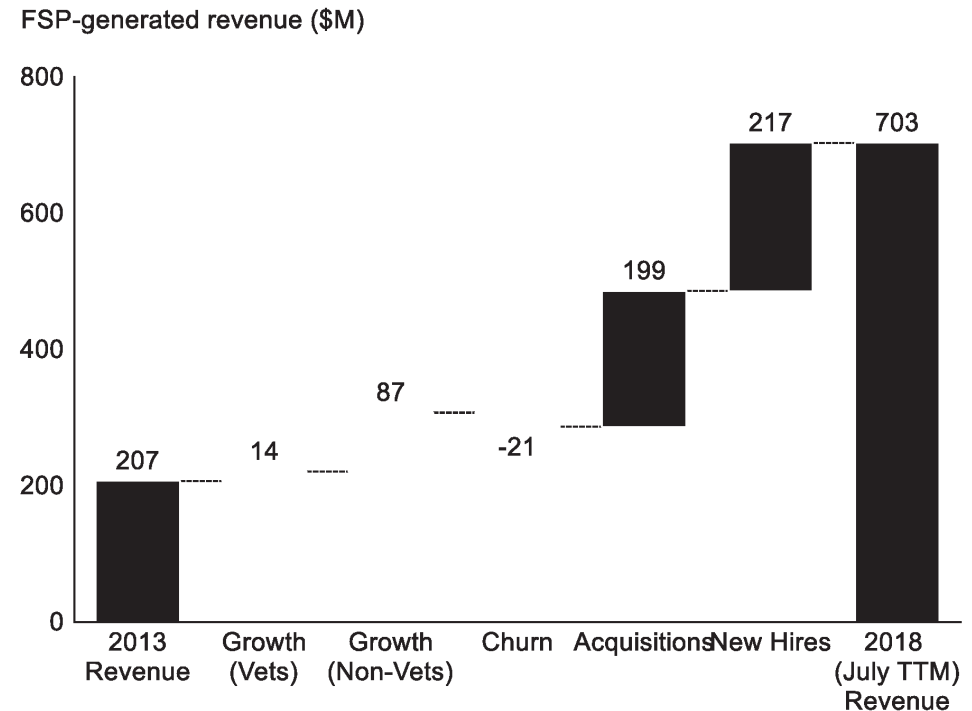
COMPETITIVE POSITION

/ PRELIMINARY

BSN has taken significant share in the past few years



Share gains are primarily driven by acquisitions and hiring of new Field Sales Pros



Note: Vets defined as employees hired before 2009 (i.e. 5+ years of experience by 2013); transaction data does not include freight collected; analysis includes all FSPs tied to transaction data.
Source: Field Sales Employee Table; BSN transaction data; BSN company data

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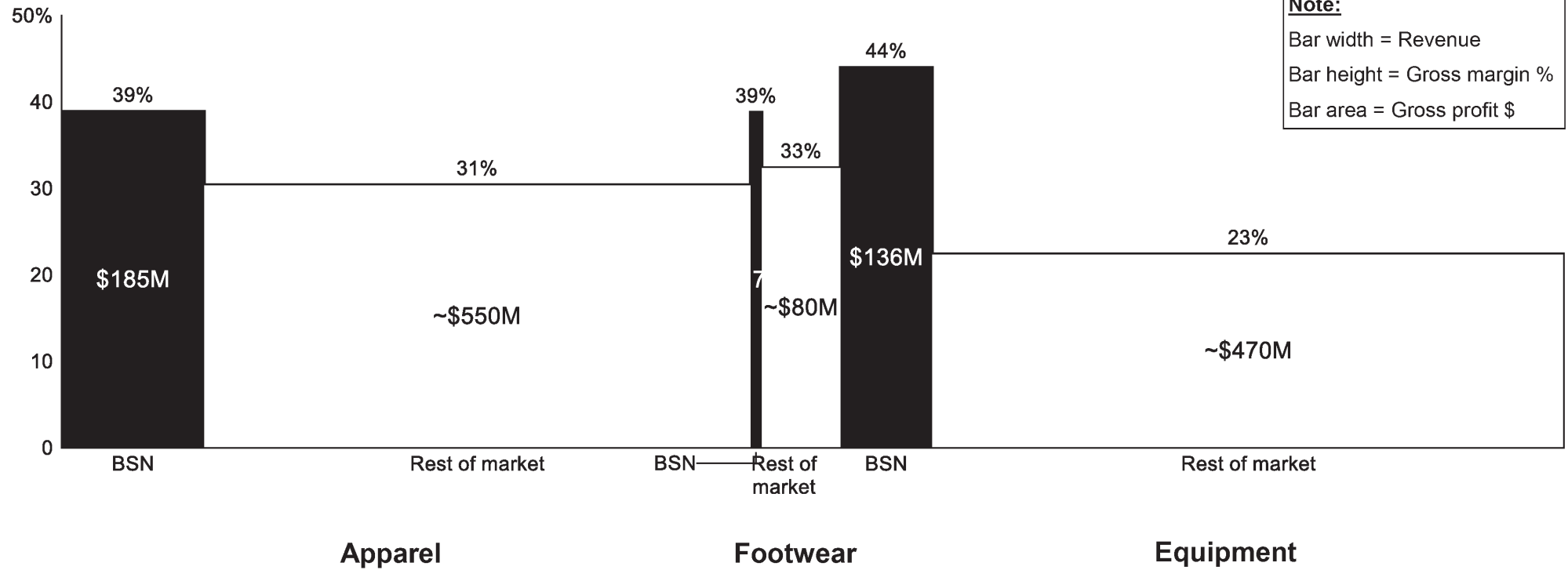
...and has captured an out-sized portion of the industry profit pool

COMPETITIVE POSITION

/ PRELIMINARY

Average gross margin (%)

Total = ~\$1.4B



Source: 2017 BSN transaction data; industry participant interviews

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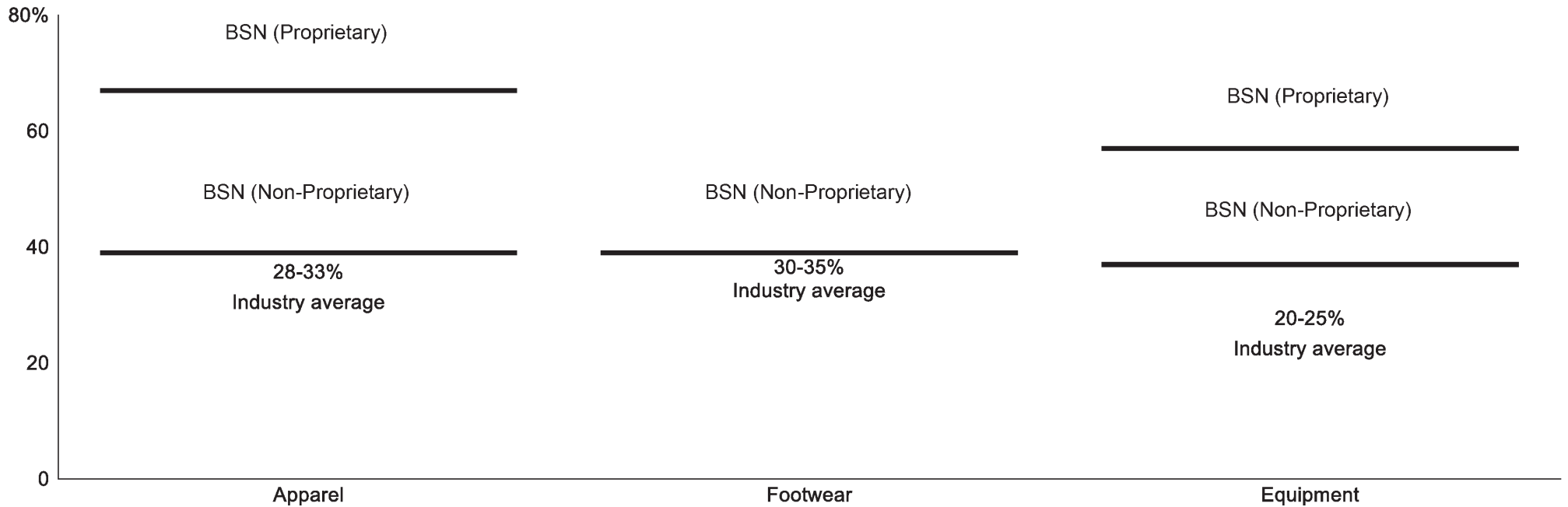
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BSN's margins are higher than industry averages, suggesting it's realizing benefits of scale (e.g. purchasing)

MARKET ATTRACTIVENESS

/ PRELIMINARY

Gross margin %



Source: Industry participant interviews, BSN 2017 internal data

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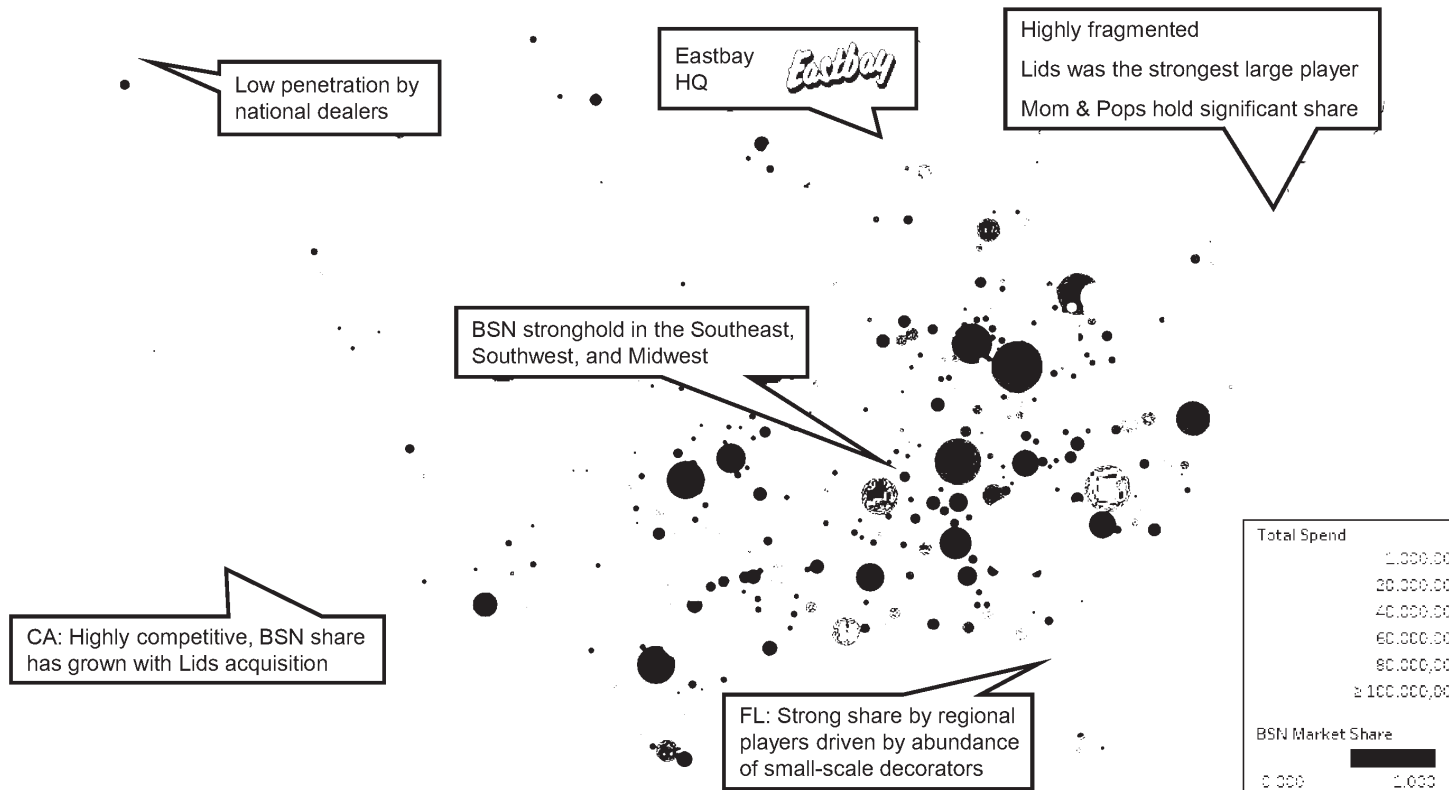
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BSN's market share varies significantly by metropolitan area (MSA); lower penetration in the North East and West regions

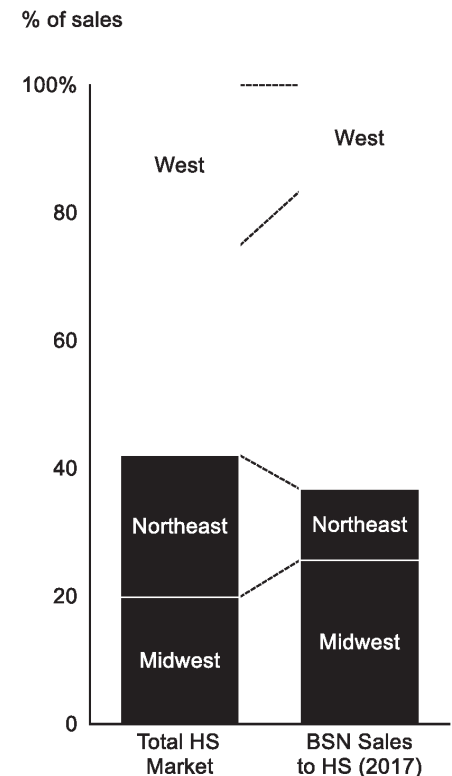
/PRELIMINARY

COMPETITIVE POSITION

BSN has high share in the South/Midwest, and low share in the Northeast/West



Regional market share (HS only)



Note: Only includes high schools, excludes some schools for which CBSA was not available
Source: BSN internal data; Bain 2016 opportunity estimation

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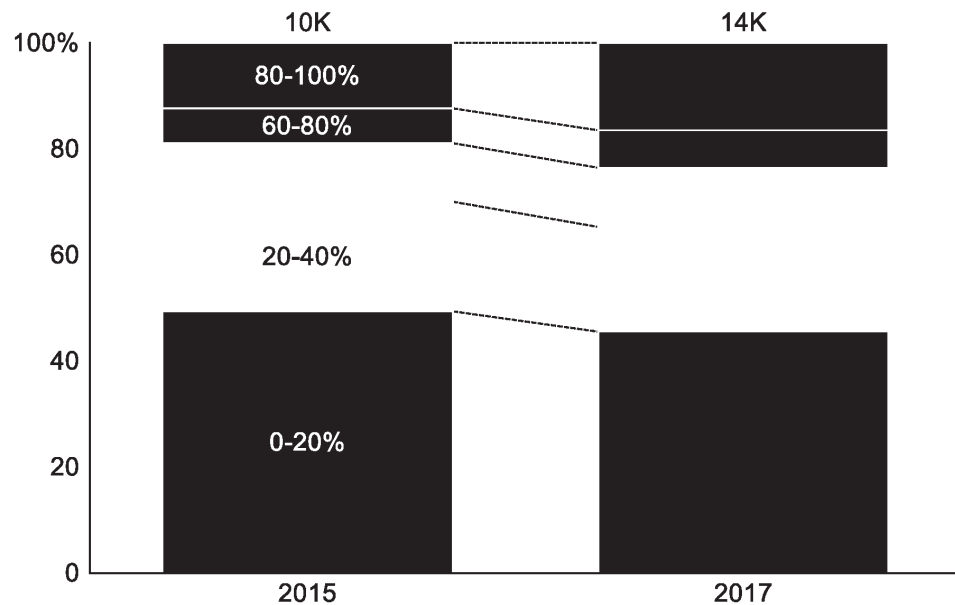
Significant white space still exists in current accounts

COMPETITIVE POSITION

/ PRELIMINARY

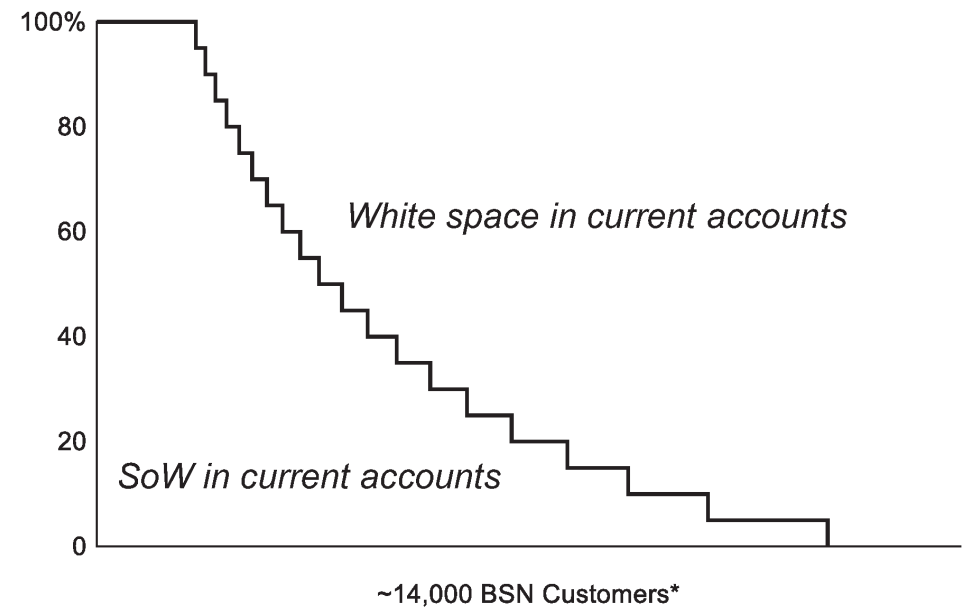
BSN has made progress going deeper into accounts over the past 3 years (HS example)...

of BSN High School accounts by estimated penetration



...And still has significant white space opportunities within current accounts

BSN Penetration (FY17) All High Schools



Note: Opportunity size based on regression model and expert interviews; *only includes BSN customers with greater than \$1K in annual sales; accounts are grouped for visibility
Source: Company data; MDR Database

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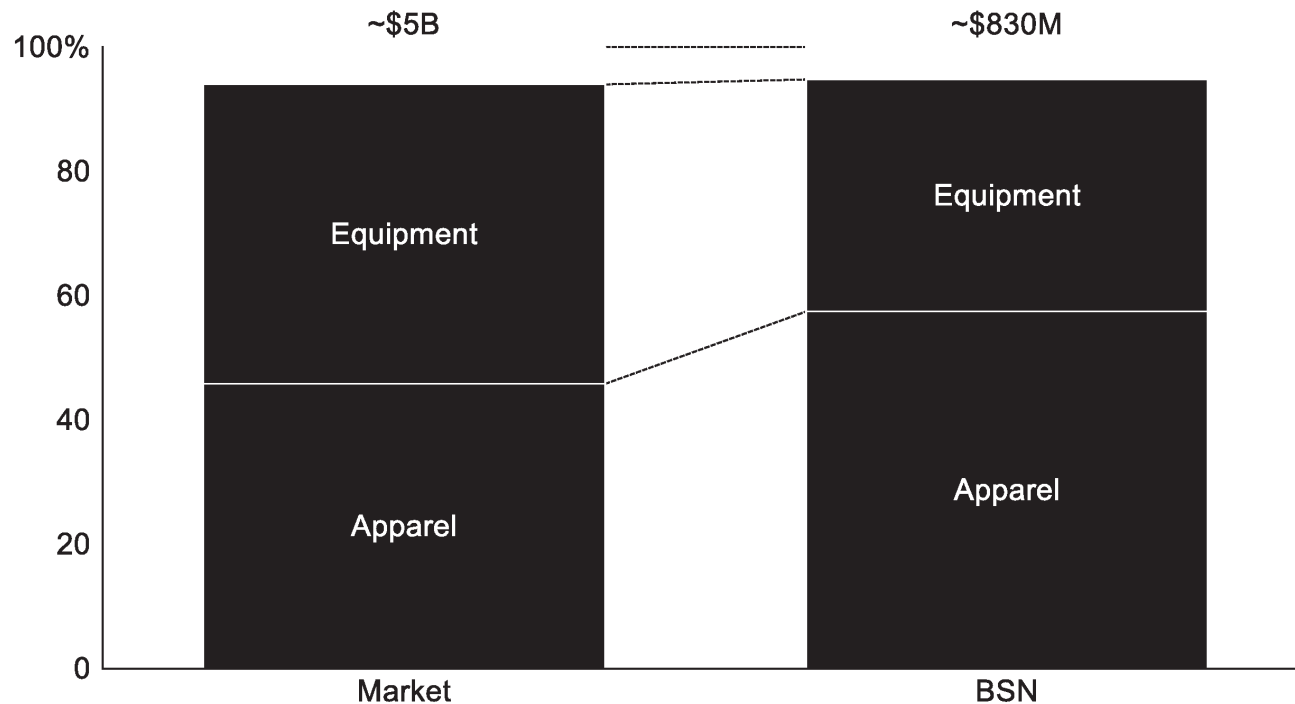
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BSN is under-penetrated in hard goods versus the overall market

COMPETITIVE POSITION

/ PRELIMINARY

2017 Market Size



48% Hardgoods represents 48% of the overall market...

37% ...but only 37% of BSN's sales

Note: *Assumes ranged ratio of addressable as overall segment, based on \$18B team spend and \$88B total sports industry v. \$5B addressable and \$18B team spend; assumes share of 15% based on share of addressable segments today
Source: NSGA Historical Sporting Goods Report (2017); NFHS Sports Participation Survey 2006-2017; NSGA Historical Participation 2017; SFIA Manufacturers' Sales by Category Report (2017); industry participant interviews

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BSN is under-penetrated in women's sports versus the market

COMPETITIVE POSITION

/ PRELIMINARY

Women's teams are currently underserved

*"Yeah they really just flock to the men's teams. I mean, **for the past 5 years our girls have been ordering men's shoes.**"*

Women's Basketball Coach, High School

*"Girls and young women are one of [the sporting good industry's] **fastest growing-markets, and one of its most-ignored.**"*

Washington Post, 2014

*"I've noticed them **approaching [the girls' teams] differently.** Our uniforms are often ordered as men's sizes, and **then the girls just have to fold them.** They're not built to fit them the right way, and we aren't being offered that... I haven't had a chance to really look at others, but **that would be a huge benefit. I mean, does someone like BSN do this?**"*

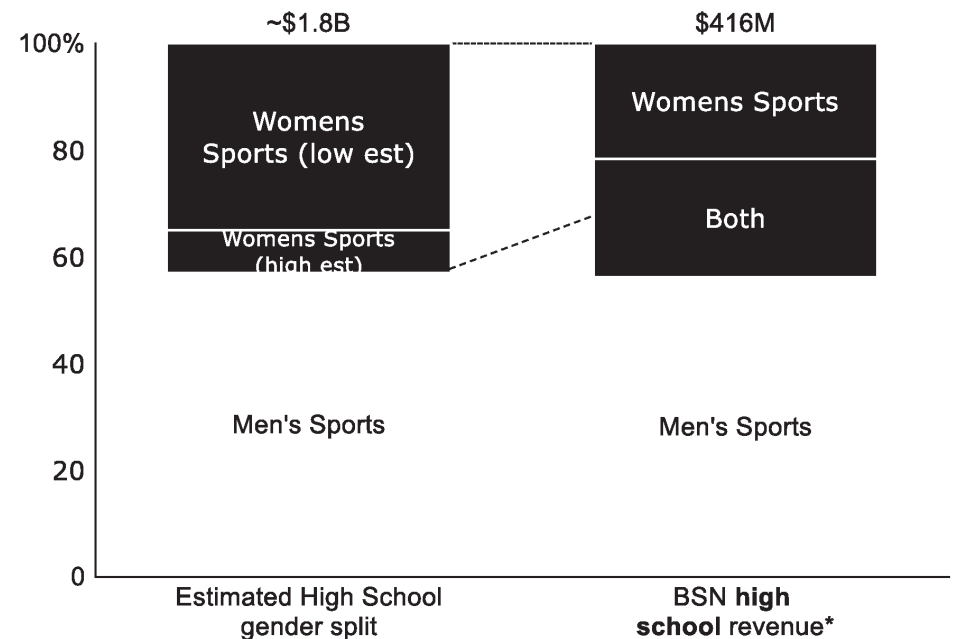
Girls Athletic Coordinator, High School

*"One of the things that the team industry is just **not doing a good job of is really attacking women's sports.**"*

EVP, Provider

BSN under-indexes on serving women's sports today

Sales by gender (2017)



Source: NSGA Historical Sporting Goods Report (2017); NFHS Sports Participation Survey 2006-2017; NSGA Historical Participation 2017; SFIA Manufacturers' Sales by Category Report (2017); industry participant interviews; company websites

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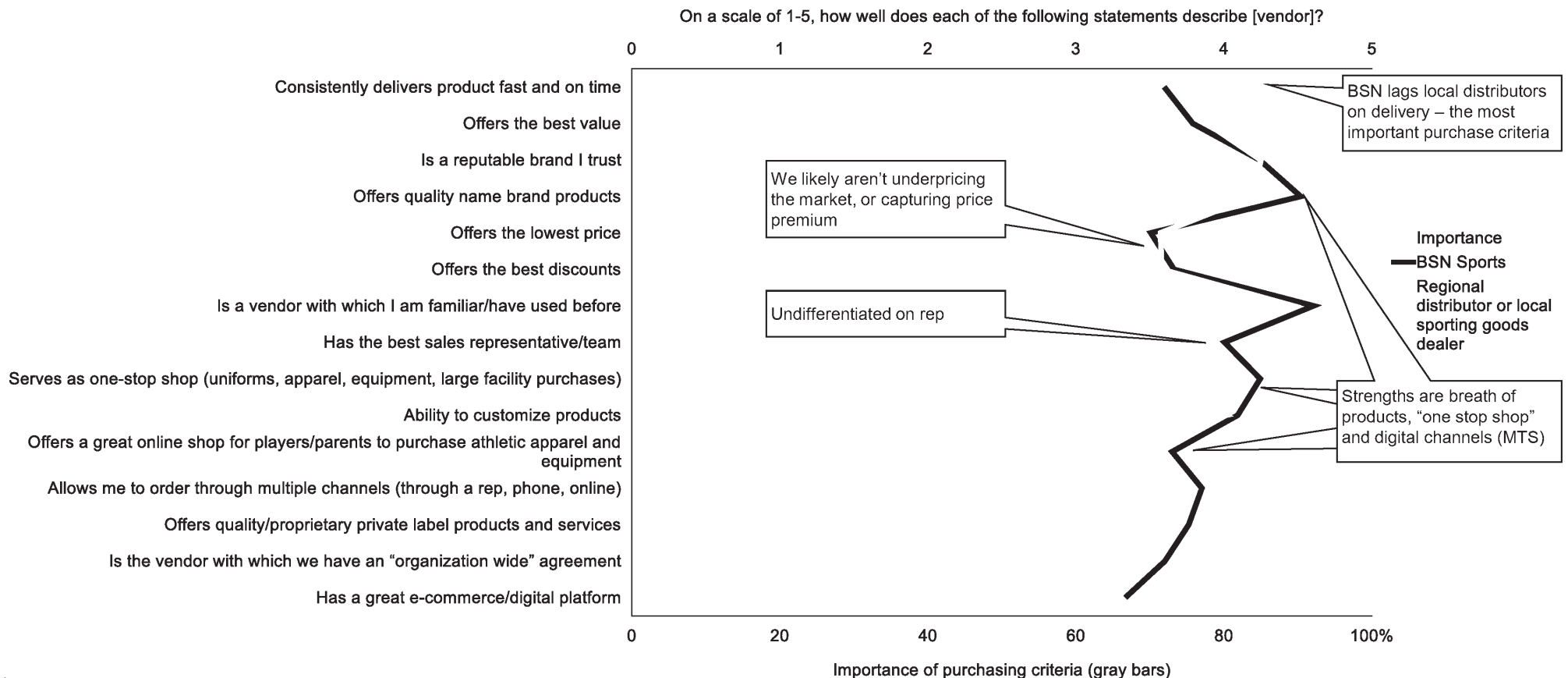
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BSN lags local team dealers on consistently delivering product fast and on time (most important KPC); it excels in breath of product and digital offerings

COMPETITIVE POSITION

/ PRELIMINARY



Source: BSN Customer Survey Data 2018, N = 810

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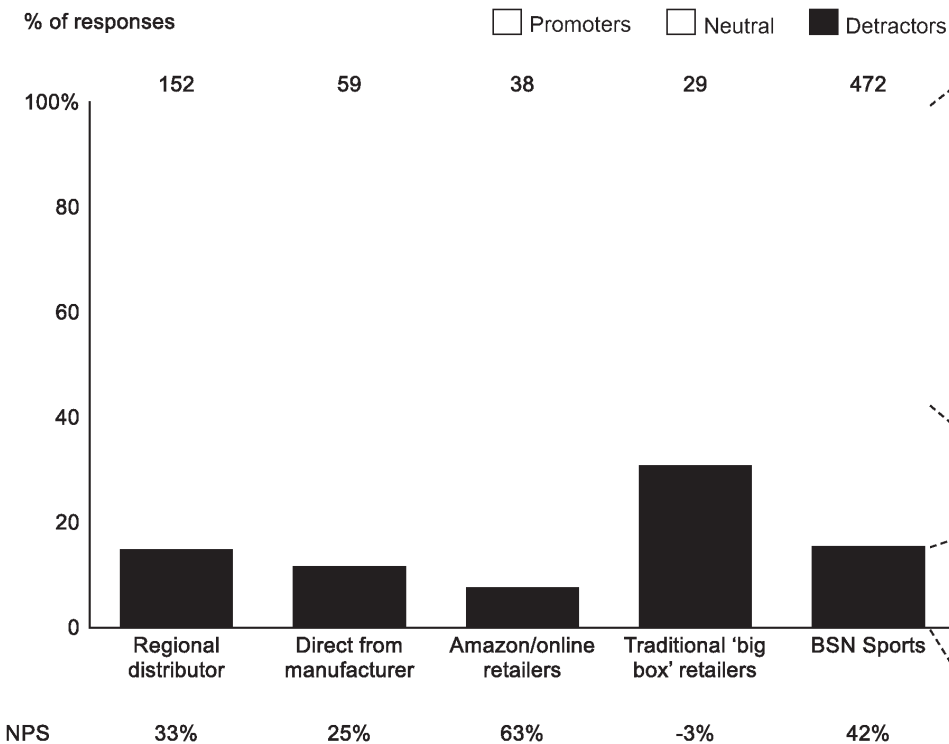
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Customer advocacy is high for BSN, including over regional distributors

COMPETITIVE POSITION

/ PRELIMINARY

Customer NPS



The "why"

- "The **variety** in equipment and apparel is excellent. **Prices** are cheaper than most others and the **sales rep and service** are excellent."
- "My **sales rep** has been phenomenal. I would not be doing half of what I am doing without [sales rep name] as our sales rep."
- "I have had great experiences the last few years working with **multiple BSN salesmen**."
- "Awesome **customer service**! They make sure artwork is always correct, and my salesperson will talk even on weekends."
- "Overall I'm extremely happy, the only negative (and why a 9, not 10) is that **products are sometimes out of stock or are on back order**, especially Nike products."
- "I believe I have the **best and most honest Salesman you can find**...available 24/7."
- "Billing system is flawed. Get billed for things I do not receive! **Continually do not get the product that I order (Nike)**, and we are a Nike school!"
- "Too many **invoices**. Items not being **shipped** all at once. Items **not in stock**. Items **taking too long to be received** after primary promise date."
- "**Products take far to long to arrive** to our College. **Freight on items tends to be expensive** as well as the printing costs on all of our apparel. Have not seen what we were sold on when we switched to BSN over a year ago."

Note: Only includes customers that use vendor as primary vendor for sports equipment/apparel
Source: BSN Customer Survey Data 2018, N = 810

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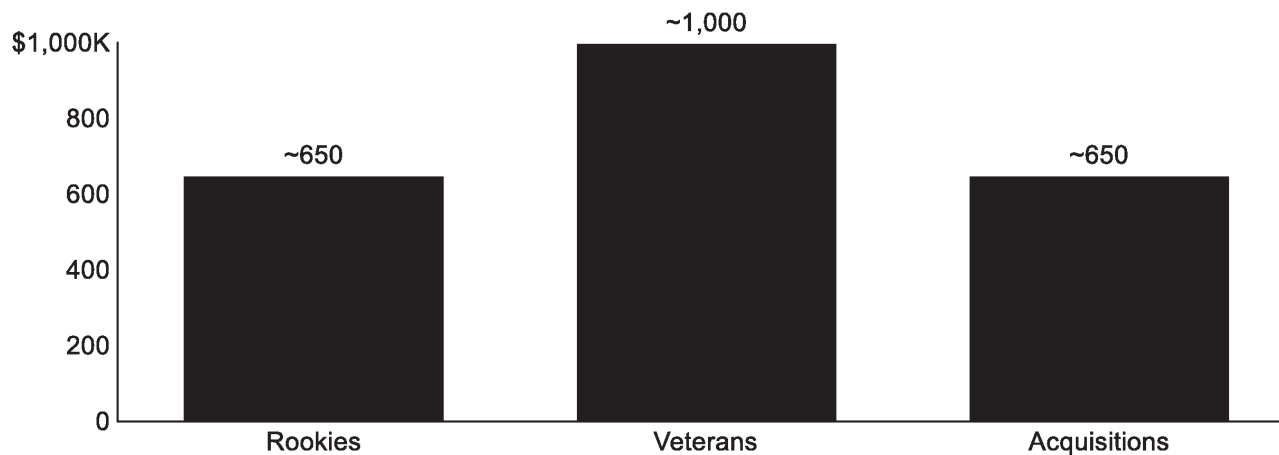
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Recent rookie hires (2013-2016 cohorts) has been similarly successfully as “buying reps”; poaching veterans shows highest lifetime profitability for BSN

BUSINESS PERFORMANCE

/ PRELIMINARY

EBITDA NPV of new reps (15 years, \$K)



Acq Costs	\$3K	\$8K	\$234K
2013 (N)	19	35	9
2014 (N)	28	30	20
2015 (N)	29	44	10
2016 (N)	53	39	119

- **Veterans:** (i.e. bounties) have been the most attractive talent opportunity with generally low costs of acquisition (~\$8K) and below average churn rates (~28% in first five years)
- **Acquisitions:** require higher premiums today (~\$200K goodwill per rep on average plus ~\$34K signing bonuses), particularly given Trivest pressure, suggesting even more reliance on Red Rover/ Project Boeing type initiatives
- **Rookies:** Improved training and L&D programming likely to improve Rookie ramp and attrition rates, making these reps more attractive

Note: Ramp analysis performed on cohort of FSPs who were employed for the entirety of start date through 2017; Average churn rates based on reps part of cohorts through 2010-2016; Revenue excludes freight collected; Costs include acquisition (i.e. goodwill and signing bonuses), ~11% commission on revenue, annual training and development costs, and ~10% 'Other' G&A costs; Costs exclude 1x1 coaching from RSMs and Annual Sales Conference costs; Internal rate of return of ~11%
Source: 2017 BSN transaction data, BSN company data

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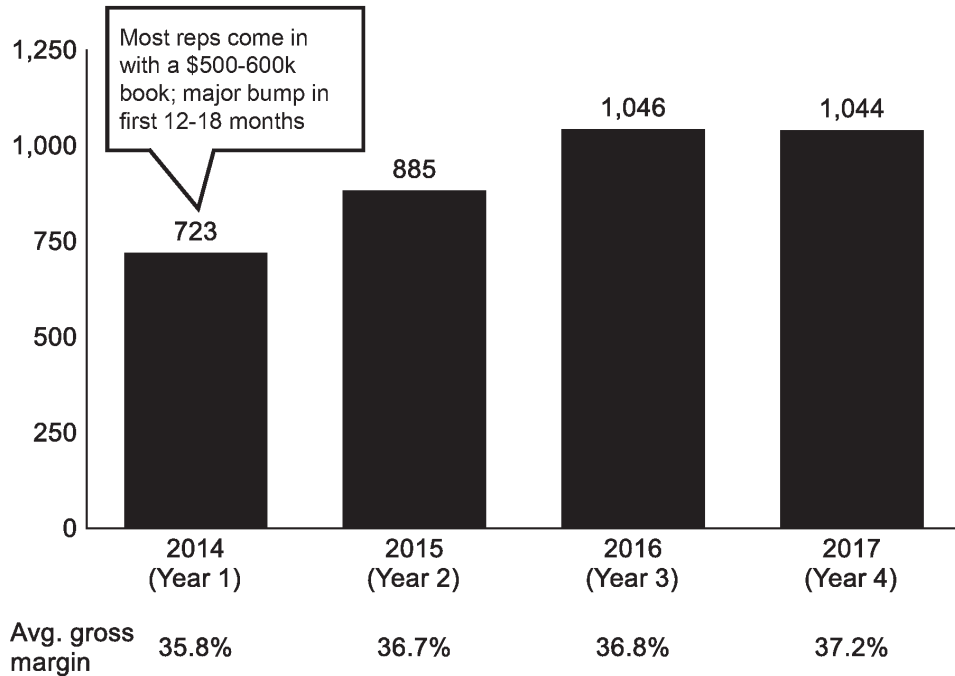
New reps to BSN typically see growth in their first few years by growing sales within their existing sports and cross selling hard goods

BUSINESS PERFORMANCE

/ PRELIMINARY

New reps in 2013 became significantly more productive during their first few years with BSN

2013 New Field Sales Pro Cohort: Average revenue per FSP (\$K)



Note: N=63; only includes new 2013 reps who sold more than \$1K per year from 2014-2017
Source: 2017 BSN transaction data, BSN company data

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Growth is driven by deeper account penetration – hard goods and more sports per account

	2014	2015	2016	2017
Avg. sales per account (\$K)	\$13.9	\$16.2	\$18.4	\$19.9
Avg. # of accounts	44	46	43	40
Avg. # of sports per account	5.8	6.0	6.0	6.2
Avg. sales per sport per account	\$2.4	\$2.7	\$3.1	\$3.2
Hardgoods % of sales	31%	31%	29%	28%
Proprietary brand % of sales	9%	9%	8%	8%
Gender (% girls)	20%	21%	22%	23%
High School % of sales	73%	73%	72%	70%

Team dealers sell on average 5-10% hard goods...First year bump primarily from ability to sell Hard Goods for the first time

There is opportunity to enhance coverage by dividing the salesforce into distinct roles to target specific segments of the market

PATH TO VICTORY

/FOR DISCUSSION

Clearly defined roles and handoffs

Field Sales

Hunt greenfield accounts in 'core'

Penetrate 'core' whitespace and service customers

Inside Sales

Lead Gen Rep

Generate appts. w/ 'core' greenfield opportunities

Support Rep

Supports FSP to penetrate 'core' whitespace

Penetrate and service 'non-core' accounts

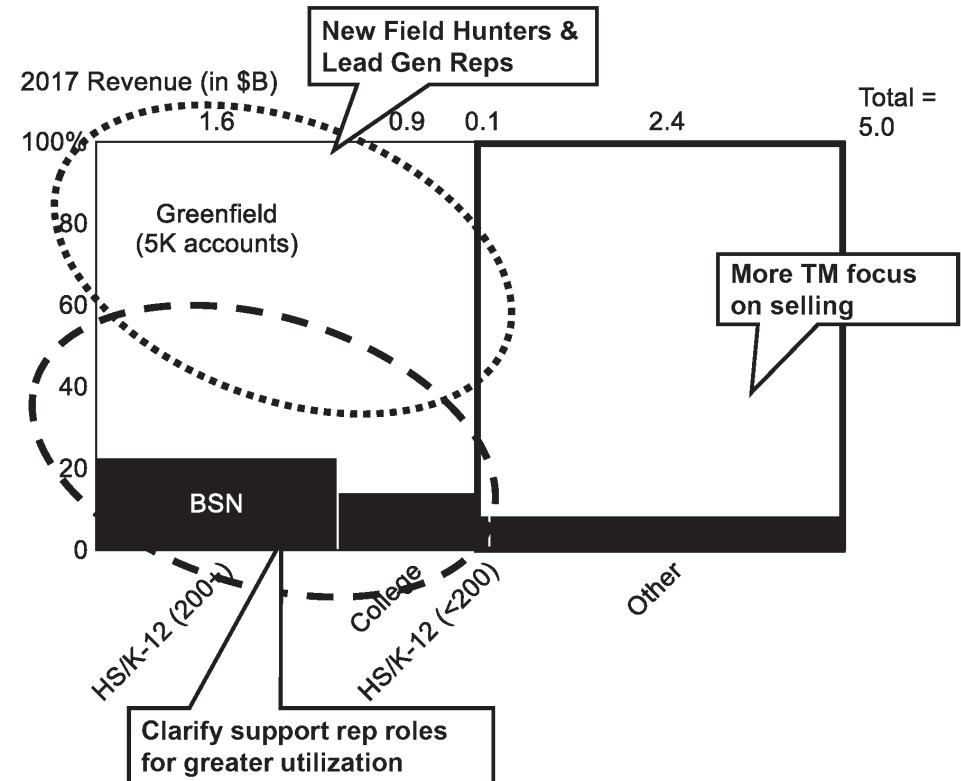
Dedicated Inside Rep

Generates leads for Hunter

Hands off account to Farmer after Year 1

Highly cooperative relationship

Potential initiatives



Note: BSN market model measures sports apparel and equipment bought in the "team environment". Split of big (200+) and small (<200) high school segments based on proportional spend and estimated opportunity based on BSN opportunity sizing. Other includes middle school, elementary, district, youth, etc. Whitespace calculated based on share of wallet determined by BSN opportunity sizing and BSN transaction data July 2018 TTM. Assumed average HS SOW for college and other segments. Source: Impact MP May 2017. BSN opportunity sizing. BSN transaction data.

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Under the current coverage model, FSPs currently serve all types of accounts

PATH TO VICTORY

Market Landscape

	High School	Middle School / Elementary	College	Field Rep Parks & Rec / YMCA / Other	Inside Rep Select / Club Leagues
Market Oppt.	\$1,500M	\$700M	\$750M	\$650M	\$750M
Total Accts	20K	77K	6K	TBD	TBD
Rev / Acct	\$75K	\$9K	\$125K	TBD	TBD
BSN Rev (Share)	\$400M (~25%)	\$40M (~5%)	\$130M (~15%)	\$55M (~10%)	\$65M (~10%)
BSN Accts	13K	5K	3K	13K	11K
BSN Rev / Acct	\$28K	\$7K	\$50K	\$4K	\$6K
% FSP Rev	98%	75%	98%	50%	90%
GP%	37%	43%	35%	44%	36%

Rep Coverage



Note: Analysis excludes "Other School" (e.g., district deals); All school account analysis is for accounts with >\$1K in spend; All non-school account analysis is for accounts with >\$0 spend
Source: BSN transaction data

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Under the potential future state, FSPs should drive much deeper penetration within High School/College, stripping away smaller accounts for Inside Reps

PATH TO VICTORY

 Field Rep

 Inside Rep

Market Landscape

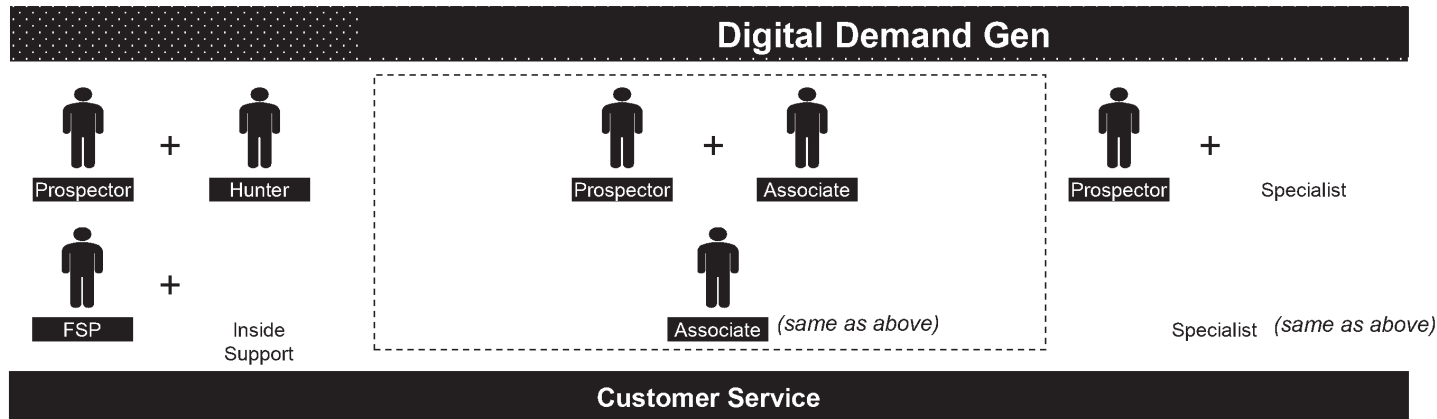
	High School / College	Middle School / Elem / Low value HS	Parks & Rec / YMCA / Other	Select / Club Leagues
Market Oppt.	\$2,250M	\$700M	\$650M	\$750M
<i>Greenfield</i>	\$1,125M	\$655M		
<i>Current accts</i>	\$1,125M	\$45M		
Total Accts	26K	77K	TBD	TBD
BSN Rev (Share)	\$530M (~25%)	\$40M (~5%)	\$55M (~10%)	\$65M (~10%)
BSN Accts	16K	5K	13K	11K

Rep Coverage

Demand Gen

Account Acq

Full Potential Growth



Note: Analysis excludes "Other School" (e.g., district deals); All school account analysis is for accounts with >\$1K in spend; All non-school account analysis is for accounts with >\$0 spend
Source: BSN transaction data

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Reducing the wide customer-level margin variability in the Sales Pro channel can generate an EBITDA opportunity of \$7-9M

PATH TO VICTORY

Variability in margins across customers purchasing products from active field reps present significant opportunity for margin improvement

Gross Margin % (Active Sales Pros)
100%



Methodology

Each dot represents a customer

Top quartile

3rd quartile

2nd quartile

Bottom quartile

Increase margin by adjusting pricing policies

- Increase margins for customers in the bottom 3 quartiles to the nearest upper quartile
- Limit price increase to 10% for bottom 2 quartiles and to 5% for 3rd quartile

Note: Includes orders booked in 2017; sales doc type "TA" and "ZMTO"; orders through active sales pros only; excludes MTS orders; excludes B1 orders and intercompany transactions; excludes resellers, and customers with negative/100% margins; opportunity net of ~32% commission pay out (including additional pay out on base revenue)
Source: Company Data

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Commercial excellence: Diagnostic identified a number of opportunities for BSN

PATH TO VICTORY

Diagnostic findings



Coverage model aligned to market opportunities

- **Many accounts are not adequately covered:** FSPs have ~40 active accounts, but are only spending meaningful time with ~10 of them, and not hunting
- **There is significant room to reduce FSP non-selling time:** ~35% of FSP's time spent on order support (unchanged since 2015)



Digital marketing intelligence and lead generation

- **No targets** for marketing lead generation and ROI, though advances made towards 1:1 marketing



Account planning, pipeline management, and target setting

- **Majority of growth from acquisitions and new reps**, while veteran rep organic growth has only contributed ~1% CAGR since 2013
- **Only ~50% of FSPs achieve sales targets**, which are 1) not based on rigorous opportunity quantification, and 2) potentially unrealistic given FSP capacity
- **RSMs are not equipped** to drive a strong sales cadence:
 - **Spread thin:** 16 FSPs each, vs. 10-12 benchmark
 - ~50% spend >10% time **selling to own customers**



Pricing enablers and outcomes

- **Significant margin variability** at the customer level for Sales Pro and MTS sales, however lower variability across Pros



Compensation that incentivizes sales performance

- **Veteran reps are not driving sales growth** above market growth rate (~3%), with no incentives to sell above current commission levels

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A G E N D A

Business definition

BSN overview

Varsity Spirit overview

Yearbook overview

Scholastic / College overview

Direct to consumer

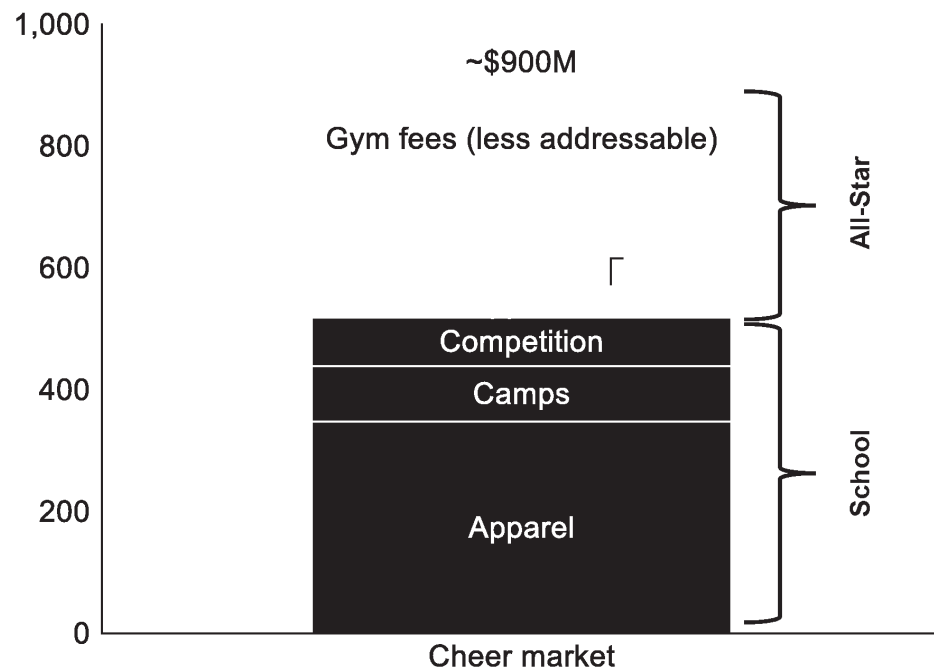
Discussion: Initial prioritization and key strategic choices

Cheerleading TAM is ~\$725M across Apparel, Camps and Competitions; including gym fees raises TAM to ~\$900M; Market is growing 3-5% p.a.

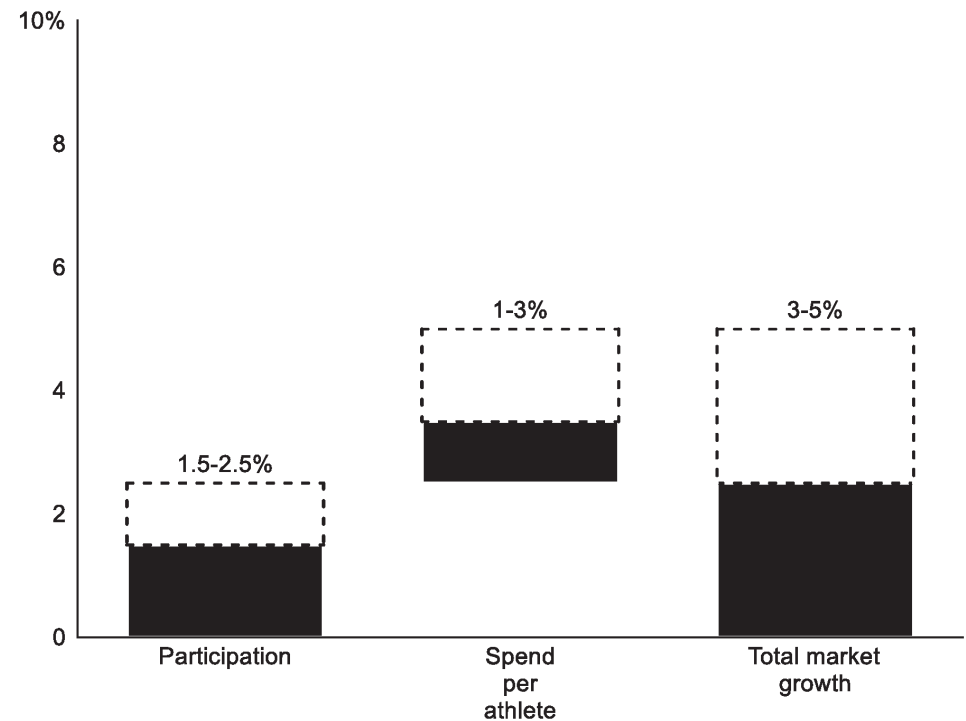
MARKET ATTRACTIVENESS

/ PRELIMINARY

2017 Revenue (in \$M)



Estimated Varsity addressable market growth ('14-'16)



Source: Bain Cheer Consumer Survey (N=989); industry participant interviews; NSGA Historical Sports Participation

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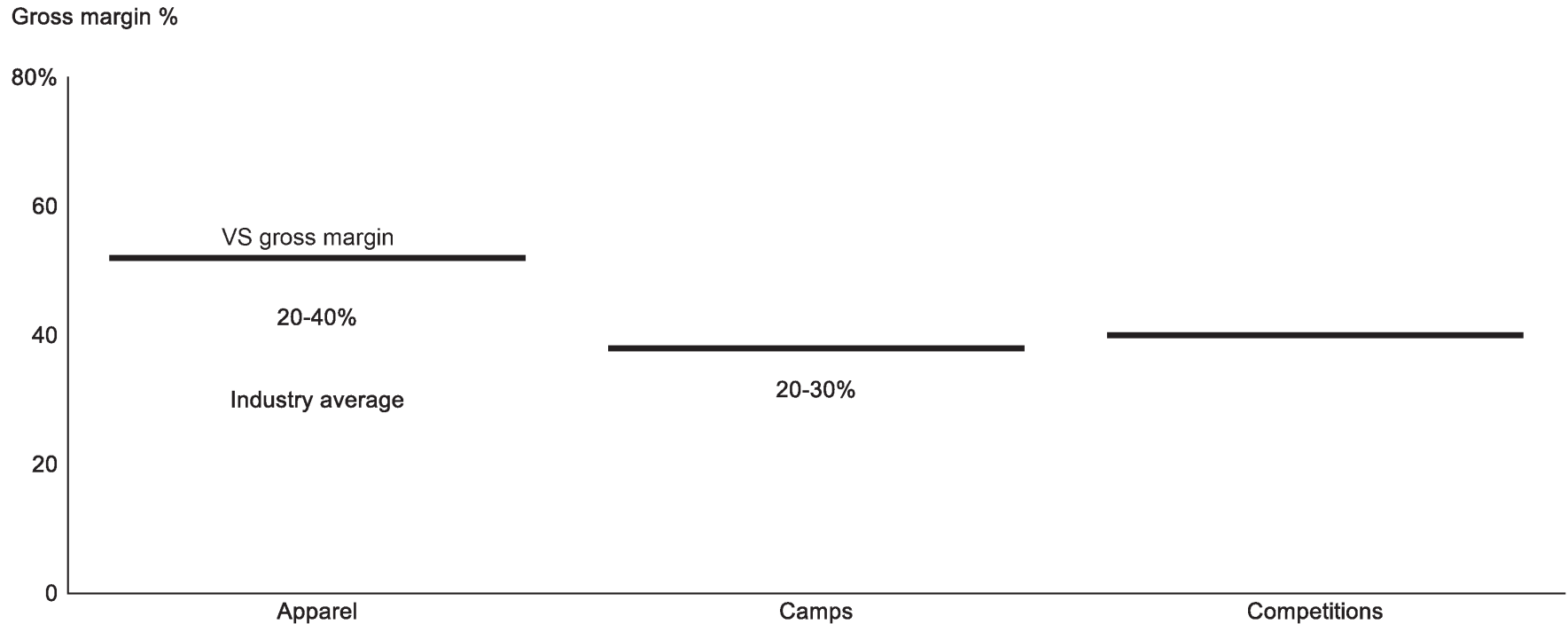
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Varsity Spirit's margins are higher than industry averages, suggesting it's realizing benefits of scale

MARKET ATTRACTIVENESS

/ PRELIMINARY



Est. VS gross profit share (% of industry GP) 64%

86%

-*

Est. VS market share (% of sales) 51%

80%

74%

:Note: *Due to high market share and fragmented market, industry average gross margin was not estimated
Source: Industry participant interviews; VS 2017 internal data

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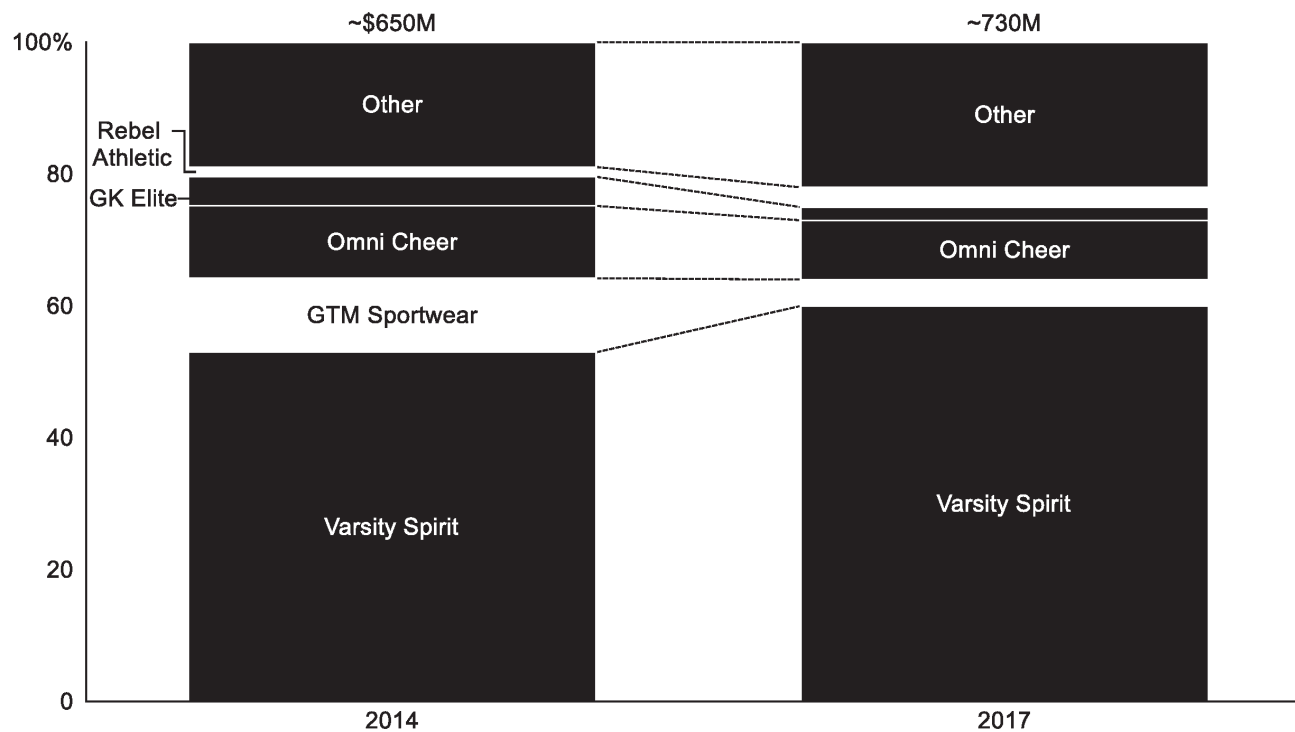
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Varsity Spirit has been gaining market share

COMPETITIVE POSITION

/ PRELIMINARY

Share of Market (%)



Factors in share shifts

- Omni and GK have lost market share due to poor sales performance in apparel
- Rebel is gaining share through gym partnerships backing All-Star gym businesses
- GTM experienced significant operational issues in 2014/2015 due to poor SAP implementation
- Nike and Under Armour are growing school-wide deal penetration
 - Not notable in market share today, but is a factor in future share

Source: Bain 2014 Cheerleading Decision Maker Survey, N=95; industry participant interviews; VS 2017 internal data

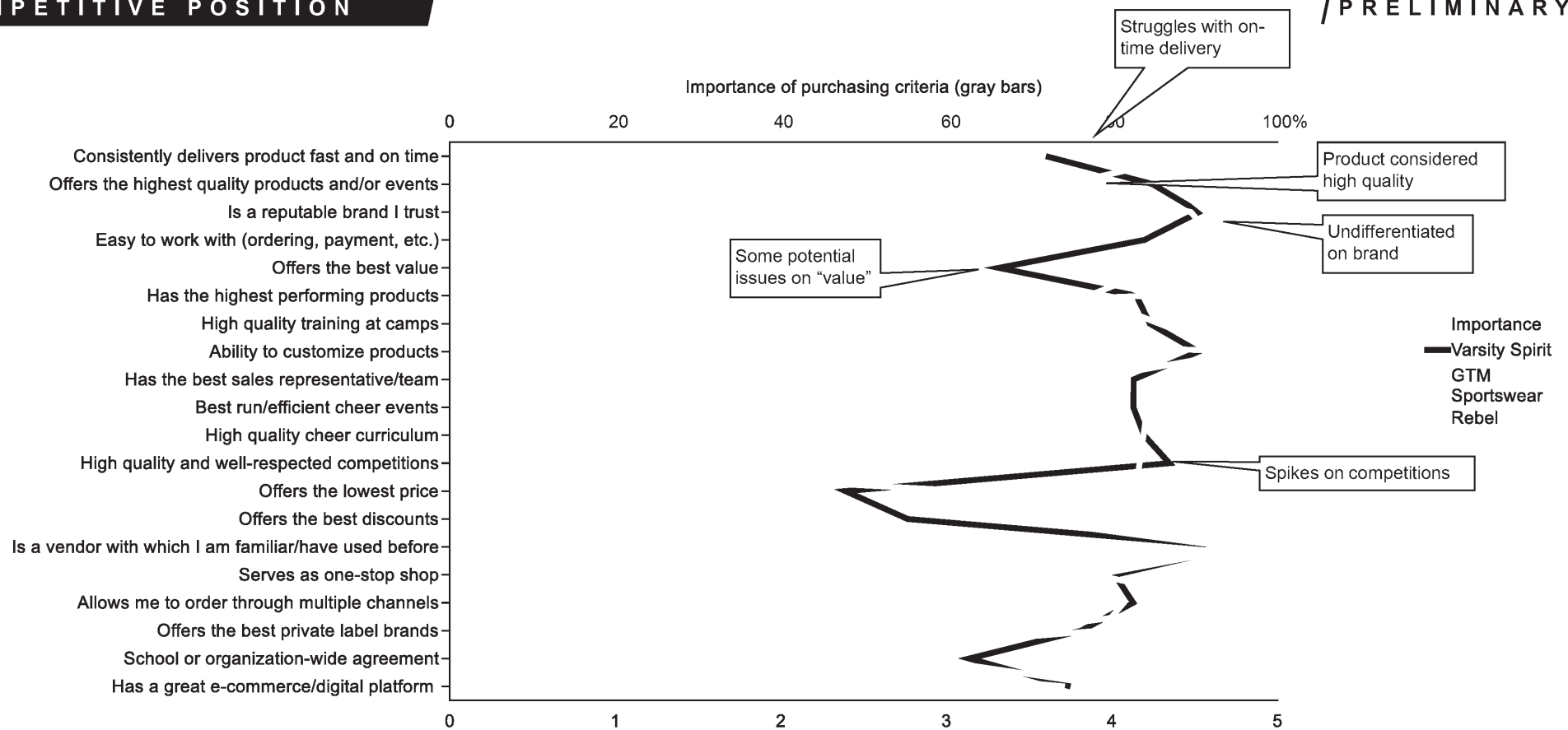
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Varsity Spirit outperforms key competitors on camp and competition quality, but underperforms in product delivery and price/value

COMPETITIVE POSITION

/ PRELIMINARY



Source: Big S Customer Survey Data 2018, N=695

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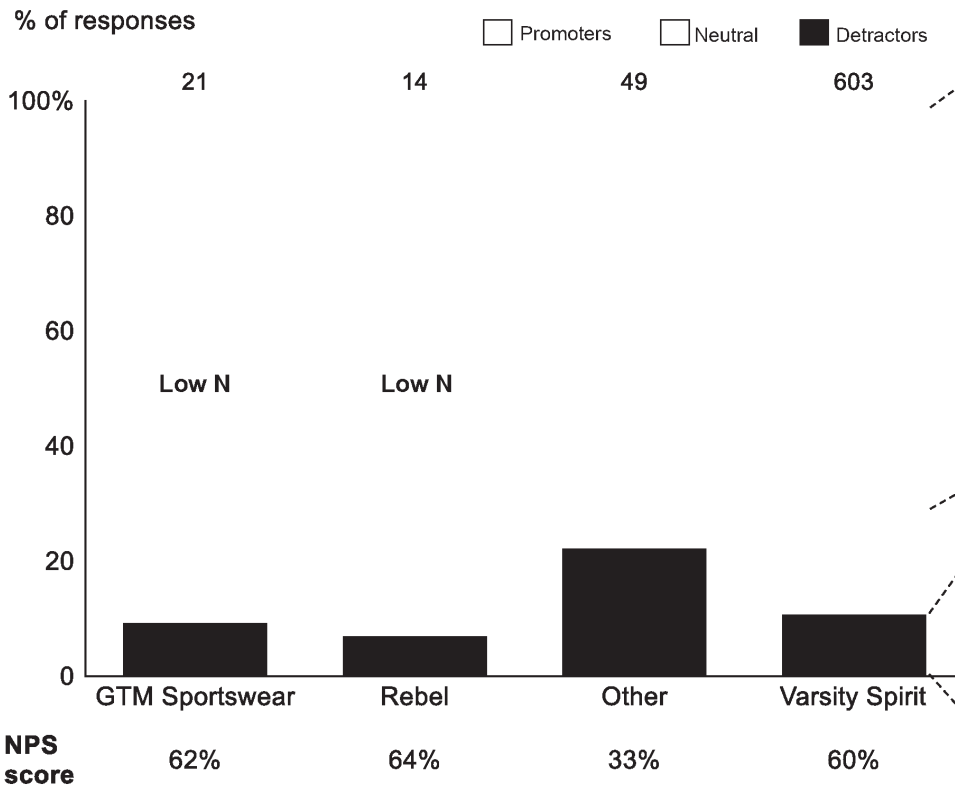
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Overall, Varsity Spirit has a NPS of 60% overall, which consistently beats the majority of other vendors, though opportunity still exists

COMPETITIVE POSITION

/ PRELIMINARY

Customer NPS



The “why”

- “The leading provider for all things SPIRIT! **Anything else is 2nd best!**”
- “Always keeping up with **current trends**. Reliable, first-class camps and competitions. **Great support** staff!”
- “Varsity has always provided **high quality products** and **impeccable service!** I could never imagine ordering uniforms from another provider.”
- “Friendly, efficient, punctual and professional! **Customer service is amazing!**”
- “I am very pleased with the quality of gear we order as well as the **option to customize** specific pieces of our uniforms.”
- “Our Varsity rep is so **accommodating and helpful**, plus Varsity has the best products for our needs.”
- “Primarily **cost**. Varsity is expensive when compared to other vendors. They pretty much have a monopoly over the industry...we have little choice.”
- “My primary reason is because of the **cost to value ratio**. The clothes are very expensive and the quality is just OK.”
- “The **price raises** yearly when the quality of the products does not. I often feel as though Varsity charges a lot for products because they know they are the most popular vendor”
- “There is **always a glitch in the process somewhere** - incorrect monogramming, bows detaching from ponytail holders, small backpacks, incorrect sizes and even a completely different font on a fill-in uniform”

Source: Big S Customer Survey Data 2018, N=695

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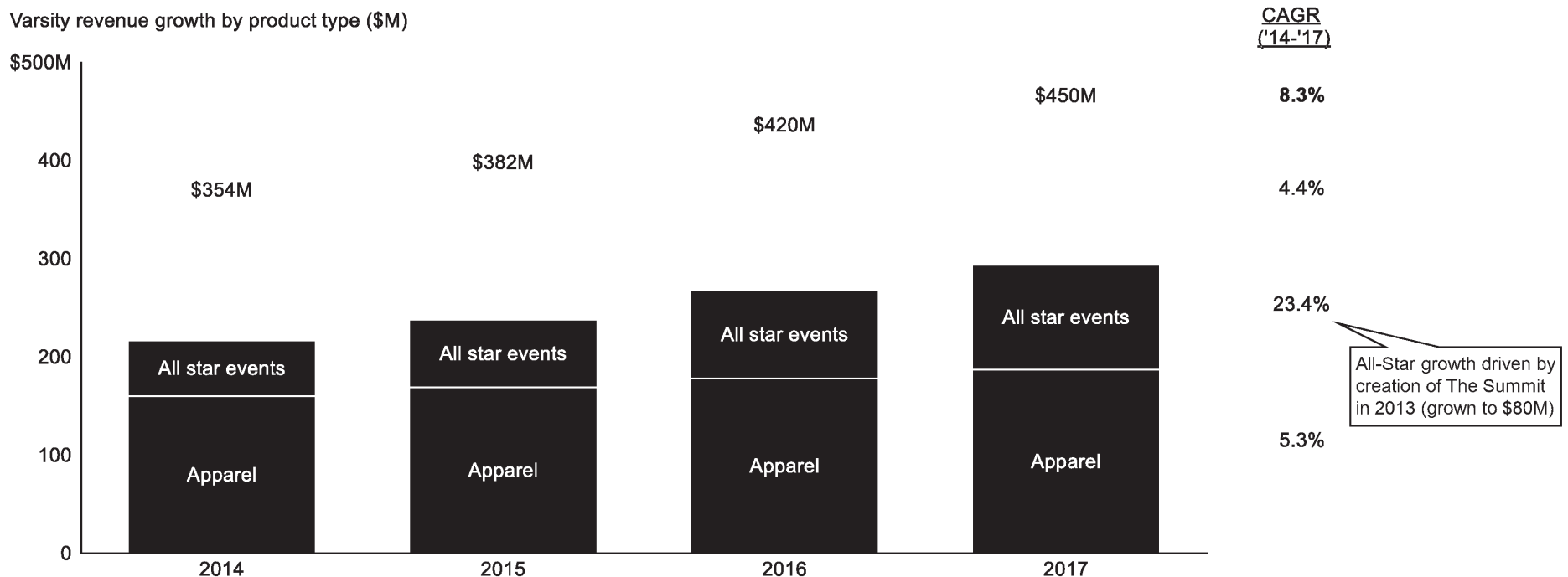
Spirit growth has been growing at ~8% p.a. since 2014, driven primarily Summit (a new series of All Star competitions)

BUSINESS PERFORMANCE

/ PRELIMINARY

Varsity Spirit has outgrown the overall cheerleading market, led by All-Star events

Varsity revenue growth by product type (\$M)



Source: Varsity Spirit P&Ls; Varsity Spirit internal data

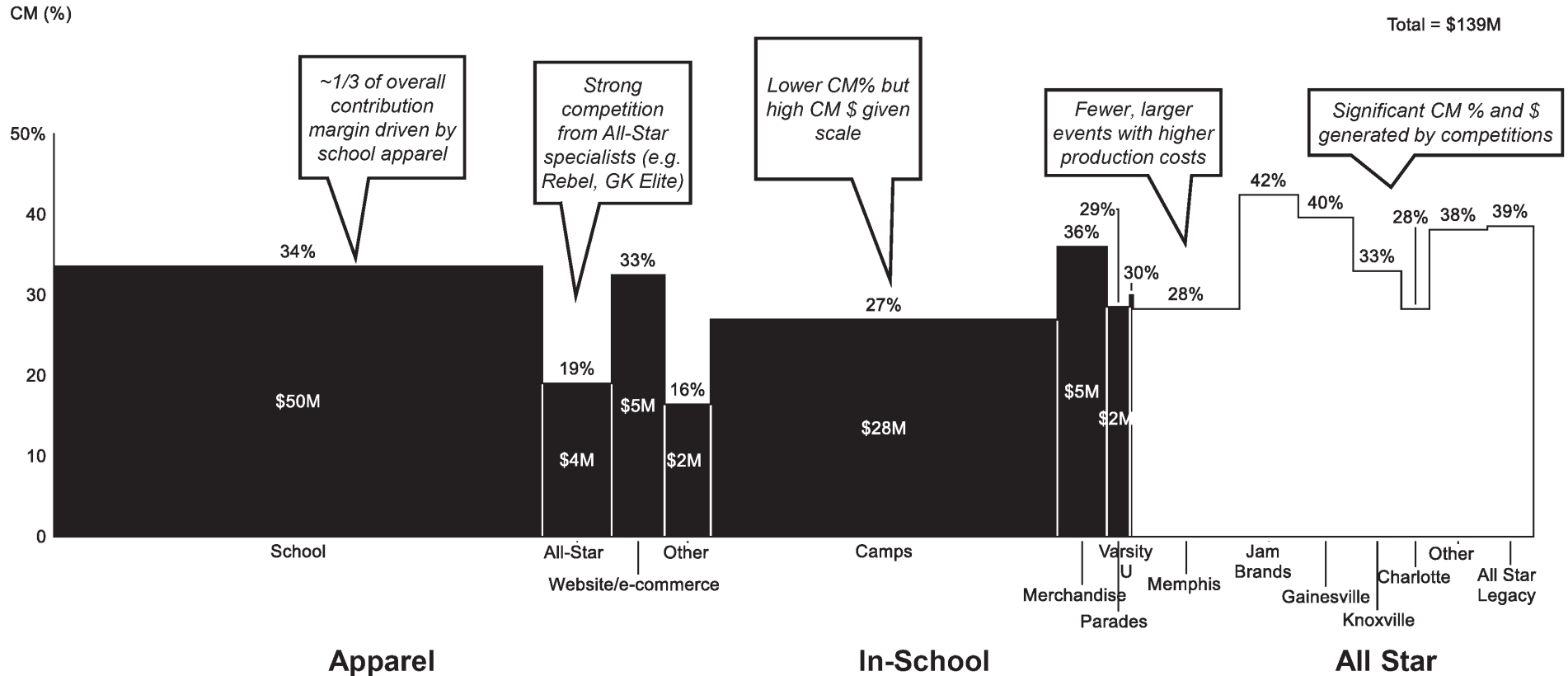
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Majority of profitability is driven by school in both apparel and camps

BUSINESS PERFORMANCE

/ PRELIMINARY



Notes:

Contribution Margin is will not reflect EBITDA margin from P&L statements due to allocation methodology, which is based on activity drivers

Other for Apparel includes Elite Brands GMBH, Ozone, and Spirit Apparel; Other for All Star includes Charlotte Ops, Cheer Ltd, Dickinson Ops, Mardi Gras, Spirit Celebration, Team Champion, and VBI Champion

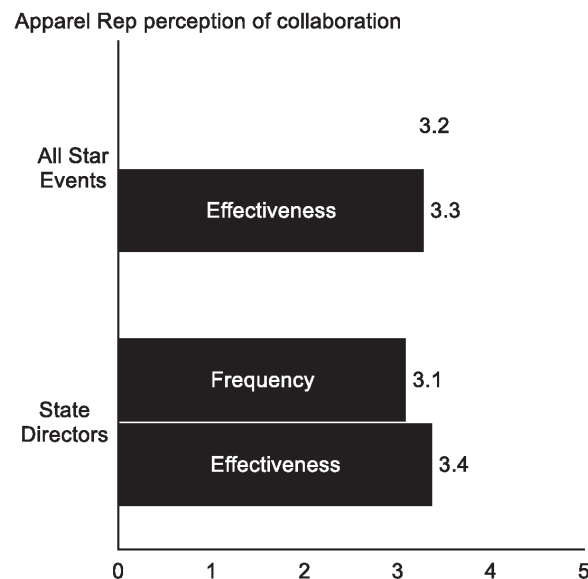
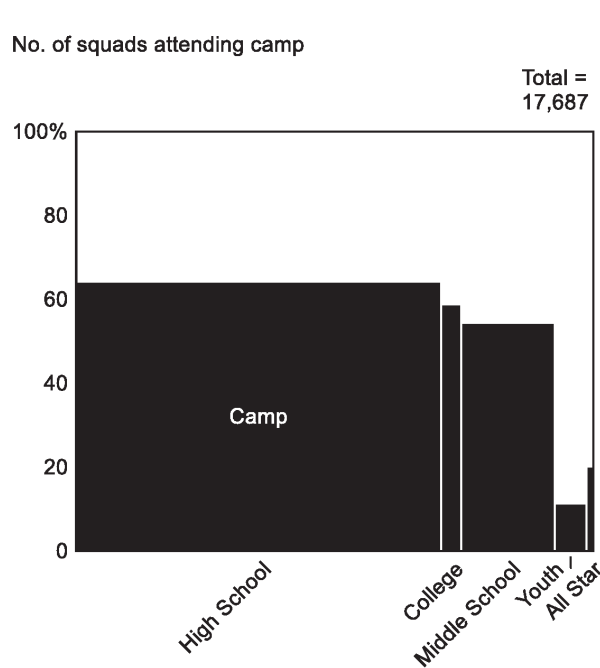
Source: Varsity Spirit P&Ls; Varsity Spirit internal data

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Cross-selling opportunities between sales teams remain a path for increased whitespace growth

PATH TO VICTORY

~40% of apparel-buying squads are not currently attending Varsity camps, which could be enabled through better collaboration between the sales teams



What we heard

“The way I think about it is ‘Let’s help each other!’ I try to leverage my Apparel Rep to help my re-sign my loyal squads so I can focus on growing the business. They get the campwear from the business.”

State Director

“The collaboration with Apparel reps could be better given the selling seasons are about the same.”

All Star Advisor

*“The incentive is not there for me to spend my time on camps/competitions. Even if I bring in a ton of business, I am not going to see a meaningful bonus from it. **Why waste my time?**”*

Apparel Rep

Note: Squads included in opportunity sizing spent at least \$2.5K on Varsity apparel products
Source: 2018 Territory Opportunity Analysis; Bain Varsity Spirit Sales Surveys: Apparel Reps (n=307)

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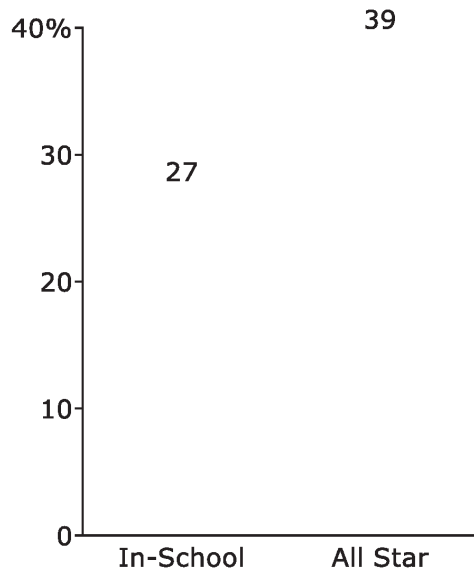
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Competitions: Travel costs are high for both school and All Star cheerleaders, driving demand for local events

PATH TO VICTORY

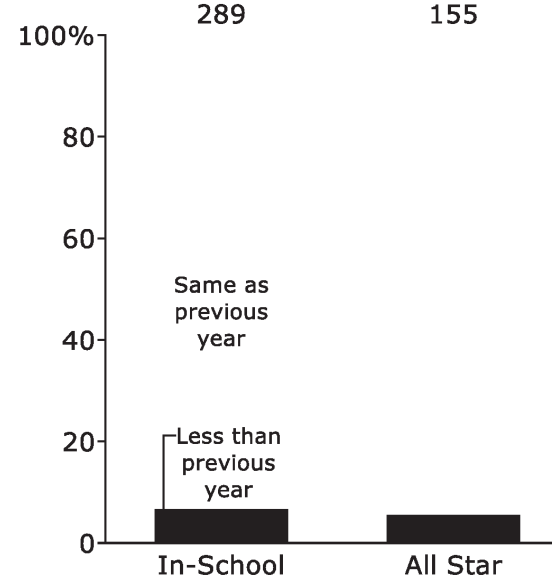
Travel costs are high for both school and All Star

Travel % of event costs



Some are spending more every year on competition travel

Number of cheerleaders



Local competitions reduce travel costs

*"We travel all over the southeast to attend competitions. The team is spending 15-20 nights each season in a hotel room. **We try to keep the schedule as local as possible**, and it's always within driving range, but the travel costs definitely add up."*

All Star Cheer Coach

*"We are a small gym from a rural area. Our parents can't afford to spend a fortune on cheerleading. **We really try to stay local, but most of our competitions are at least 2-3 hours away.**"*

All Star Cheer Coach

*"Fees are going up; a weekend at Disney is easily \$3000. **There are times when it feels like they're going to start pricing out some of the All Star athletes.**"*

Sales Rep, Cheer Brand

Note: Changes in travel costs shown only for those cheerleaders who went to the same number of camps / competitions as the previous year
Source: Bain Cheer Consumer Survey (N=989)

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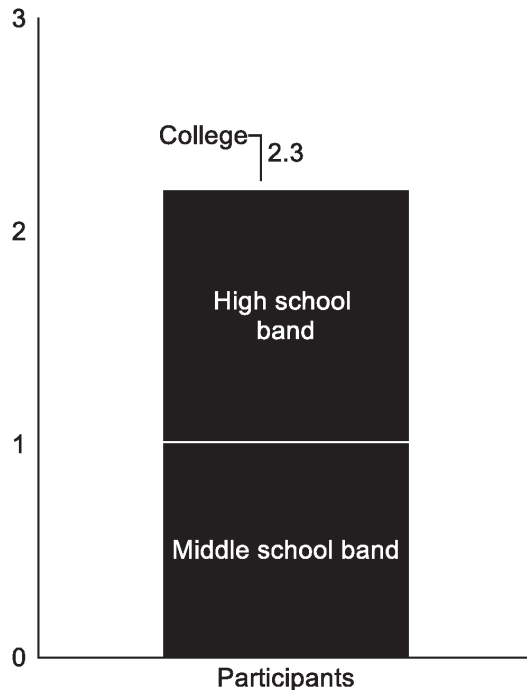
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Near-in adjacencies: Marching band apparel TAM is estimated at \$175-230M

PATH TO VICTORY

/ PRELIMINARY

Participants (M)



Avg. uniform cost
\$400-500
 / every 7 years

\$60-70 + \$20-30
 Uniform cost/year Other apparel

X

Band participants

2.3M

=

\$175-230M

Addressable apparel market



Key insights

- Uniform design starts up to 18 months before uniforms are expected to be purchased
- Design is the most important component for band directors
 - Process is time consuming
 - Significant coordination required during the design process
- Key players in the market:
 - Fred J. Miller, Inc. (FJM)
 - Stanbury Uniforms
 - Digital Performance Gear
 - DeMoulin Brother's & Company
 - Dance Sophisticates
 - AWCT Performance Wear
- Band camps/competitions represent add'l opportunity (has not been sized)

Critical question: can Varsity do for Band what it did for Cheer (grow the market by owning and redefining the sport)

Source: National Association for Music Education (MENC); College Band Directors National Association

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Near-in adjacencies: Team dance apparel market is \$100-300M

PATH TO VICTORY

/ HIGHLY PRELIMINARY

High school dance team participants

200-400K

X

Uniform costs per year

\$200-400

+

Other apparel + Accessories

\$300-400

=

\$100-300M

Addressable dance apparel market

Early thoughts on how to win in dance apparel

- Similar to cheer, accurate sizing, fit, and quality are essential to success as a dance apparel vendor
- Coaches highly value tailored service from reps during the design and fitting process (similar to cheer)
- Customization of dance uniforms is essential
 - Standing out at competitions is a high priority for coaches
 - Offering a variety of styles, colors, and customization is crucial for vendors



Critical question: can Varsity achieve the scale in the Dance industry?

Note: Target market is high school team dance participants; Dance team is defined as having >10 participants
Source: Industry participant interviews

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Commercial Excellence: Diagnostic identified a number of strengths and opportunities across the Varsity Spirit commercial team

PATH TO VICTORY

Diagnostic findings



Coverage model aligned to market opportunities

- On average, Varsity Spirit reps are assigned large number of accounts (~90 per Apparel Rep), but **do not have the capacity to properly service them all**
- There is **room to reduce non-selling time**, particularly for Apparel Reps: ~60% of time is spent on non-selling activities



Digital marketing intelligence and lead generation

- Recent investments in digital marketing data engine, but **no target-setting process** and **limited tracking of digital marketing KPIs**



Account planning, pipeline management, and target setting

- **Goal-setting is not based on market opportunity**: flat 6% growth over prior year's sales
- **Variation across sales team and regions in terms of sales goal attainment**: ~45% of reps reached goal in 2017
- RSMs are noted as critically important to success of sales reps, but **only spend ~50% of their times supporting reps** (13% of which is spent training)



Pricing enablers and outcomes

- Camps/Competitions: limited correlation between event participant growth and price increases implying **list price opportunity**



Compensation that incentivizes growth & 'value based' margin realization

- **No quota requirements** or minimum margins
- Reps are **not incentivized to cross-sell**: ~\$40% of Apparel-buying squads are not going to camp

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A G E N D A

Business definition

BSN overview

Varsity Spirit overview

Yearbook overview

Scholastic / College overview

Direct to consumer

Discussion: Initial prioritization and key strategic choices

Yearbook market is ~\$910M with majority of sales in the high school segment

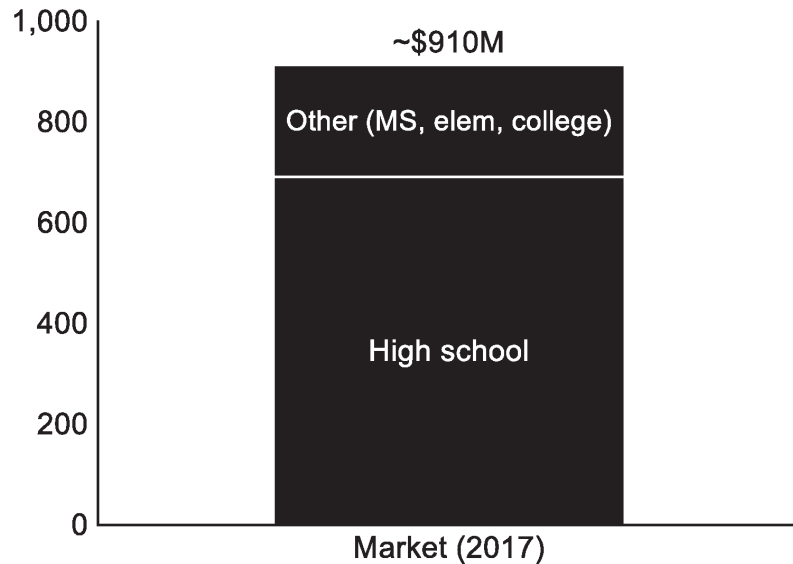
MARKET ATTRACTIVENESS

/ PRELIMINARY

~75% of the yearbook market is focused on high school

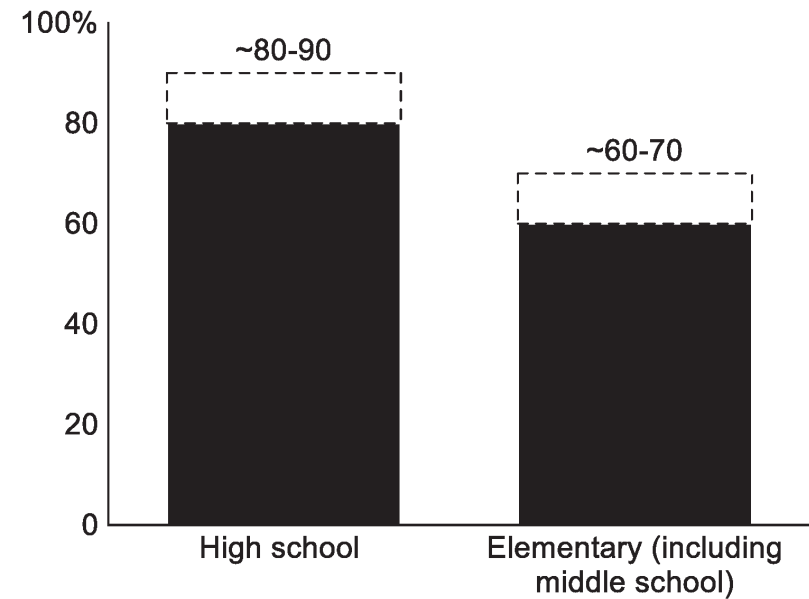
Yearbook market penetration estimated ~80-90%;
elementary/middle school estimated ~60-70%

2017 Revenue (in \$M)



Estimated penetration (% of total schools in US)

/ DIRECTIONAL



Source: Industry participant interviews; HJ internal data

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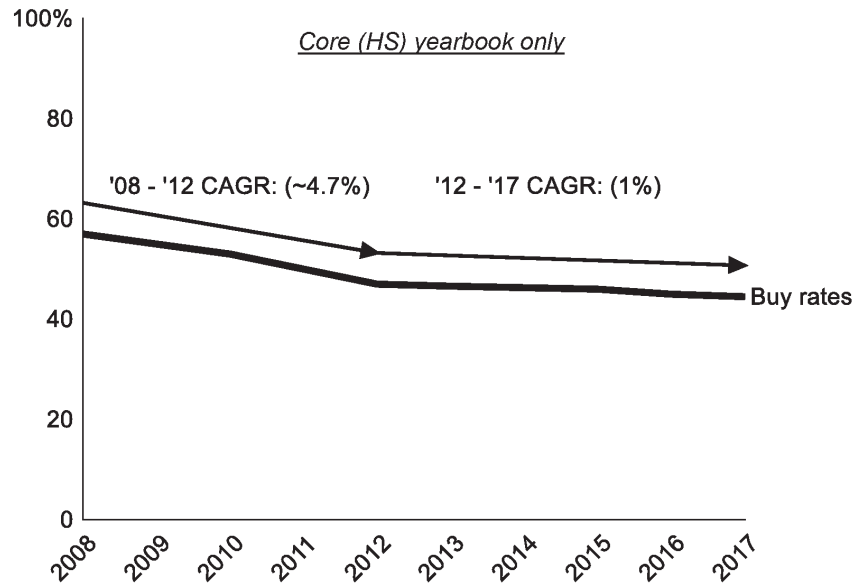
Overall market contraction has slowed to (~1%) per year; contraction driven by decreased buy rates in high school segment and marginally offset by elementary

MARKET ATTRACTIVENESS

/ PRELIMINARY

Core Yearbook buy rates have been declining but flattening in recent years

Three-year rolling average buy rate for Core Yearbook (# purchased / HS student)



Declining industry sales based largely on falling buy rates, offset partially by price and elementary sales

- Contracting market is driven largely by **decreased buy rates for high school yearbooks**, owing to:
 - Increased use of social media
 - Increased price-sensitivity (dovetailing with industry-wide price increases)
- Falling unit sales have been **partially offset by price increases and add-ons** (e.g., custom covers); however as price continues to rise, **unit sales continue to fall**
- Slight growth in elementary/middle school segment** as penetration ticks up slightly

*"You can't deny that the **market is shrinking**. Everyone is feeling it, but **high school yearbook is hit the hardest**. Even with price increases and the elementary segment growing slightly, most schools are largely penetrated, so the **unit attrition is hard to recover**."*

Source: Industry participant interviews; yearbook and class jewelry consumer survey (N=1,500)

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Corporate VP of E-Business & Business Development, Yearbook Co.

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Competition in the yearbook market is driven by differentiation – in service, product quality, sales reps, value, and delivery

MARKET ATTRACTIVENESS

/ PRELIMINARY

Differentiation drives market share

	What good looks like	Customer quotes
Easy to work with	<ul style="list-style-type: none"> Responsive reps Simple, digital ordering/ payment systems 	<ul style="list-style-type: none"> <i>"I heavily rely on my vendor's expertise and need them to respond quickly to my questions"</i>
Highest quality products	<ul style="list-style-type: none"> Overall high quality experience from curriculum, software, service/support and book quality 	<ul style="list-style-type: none"> <i>"Actual books aren't that different, but the experience a vendor offers me and my students makes all the difference"</i>
Best sales representatives	<ul style="list-style-type: none"> Trusted consultant for Yearbook Advisers and their students; sought after for guidance/curriculum 	<ul style="list-style-type: none"> <i>"Besides typical customer service, I need my sales rep to be my mentor and help teach my students"</i>
Best value	<ul style="list-style-type: none"> Superior service with competitive pricing 	<ul style="list-style-type: none"> <i>"As a principal, I have to make sure that the product is competitively priced for the students/parents"</i>
Delivers fast and on time	<ul style="list-style-type: none"> 100% on time delivery 	<ul style="list-style-type: none"> <i>"You only get one shot with a yearbook—you can't miss on delivery"</i>

Source: HJ Company Data, Industry participant interviews

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...And scale drives leadership economics

Operational leverage

- Relative market share correlates w/ Return on Sales (EBITDA %)
- Jostens (#1 player) estimated EBITDA margin is ~5-10% higher than HJ, likely driven by:
 - Leveraging selling and administrative costs
 - Higher manufacturing utilization









Sales productivity

- Recent HJ analysis suggests that penetration drives sales productivity as territories with higher market share have higher sales per rep
 - ~\$600K avg sales per rep in "low share" territories
 - ~\$900K avg sales per rep in "high share" territories

Herff's largest competitor is Jostens who differentiates in both go-to-market and service capabilities

COMPETITIVE POSITION

/ PRELIMINARY

	Position	Share Δ	Commentary
	#1 in Core HS #2 in E/MS		<ul style="list-style-type: none"> Known for focusing on high-end customers Strengths in e-Commerce capabilities and user interface ~ 60% of sales online with one portal to buy Yearbooks as well as other Scholastic products
	#2 in Core HS (Same as Balfour) #3 in E/MS		<ul style="list-style-type: none"> Most award-winning yearbook company (50-60 Crown or Pacemaker award finalists annually) Perceived as offering highest quality service
	#2 in Core HS #3 in E/MS		<ul style="list-style-type: none"> Solid sales rep relationships in schools with brand recognition in the Southwest and South Technology is lagging, but working to improve digital capabilities with a new HTML offering Reputation has taken a hit for production quality issues
	#3 in Core HS		<ul style="list-style-type: none"> Perceived as middle-of-the-road technology offering but lacking customer service and support Small-scale, family-owned player with limited growth initiative
	#1 in E/MS		<ul style="list-style-type: none"> Lifetouch (acquired by Shutterfly) is aggressively hiring sales executives in major metropolitan areas Primarily plays in the budget low end of the core market and often tries to bundle yearbook with portrait services
	Small		<ul style="list-style-type: none"> Small digital players attempting to innovate and create option for one-off yearbook orders and permanent databases Some market themselves as being no cost to schools; sells directly to parents

Source: Industry participant interviews

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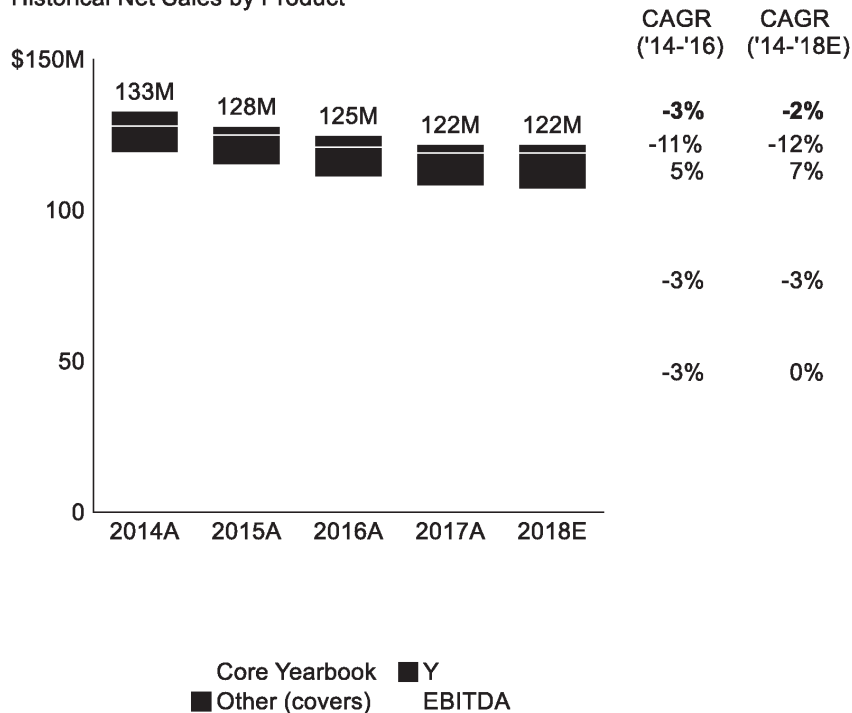
Herff Jones Yearbook revenue is ~\$122M, with \$48M in overall EBITDA, seeing declines that are roughly in-line with the industry

BUSINESS PERFORMANCE

/ PRELIMINARY

Herff Jones Yearbook revenue declining annually, Y Yearbook sales increasing (but off a small base)

Historical Net Sales by Product



Description

- Core yearbook sales have declined roughly at the market rate over the last few years
 - Reps and customers tell us that High Schools are more sophisticated about managing inventory and they are seeing slight declines in popularity
- Herff has seen growth in Y books (elementary and middle schools) due to focusing on capturing schools who do not currently have yearbooks
- Herff's moving with the market is likely attributable to the overall sticky product/relationship

Source: HJ internal data; Sales Partner interviews; customer interviews

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A G E N D A

Business definition

BSN overview

Varsity Spirit overview

Yearbook overview

Scholastic / College overview

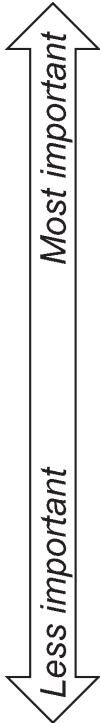
Direct to consumer

Discussion: Initial prioritization and key strategic choices

Vendors are differentiated (and thus chosen) by offering value, ease of working, and fast and reliable product delivery

OVERALL

/ PRELIMINARY

	What customers tell us drives their buying decision	Customer quotes
	Offers the best value <ul style="list-style-type: none"> Offers substantial options and customizations with superior cost position to local jewelers / competitors 	<ul style="list-style-type: none"> <i>"We need someone who is easy to work with and affordable"</i> <i>"I want good products with fair pricing for our families"</i>
	Easy to work with <ul style="list-style-type: none"> Significant involvement with school staff/students showcasing product design/options Seamless order updates and other touch-points 	<ul style="list-style-type: none"> <i>"Great customer service and efficient process is very important to us"</i> <i>"This year the rep is better than years past, much more responsive and easier to work with"</i>
	Fast and reliable <ul style="list-style-type: none"> Zero defect orders On-time delivery of customized goods, as promised 	<ul style="list-style-type: none"> <i>"If they are going to serve us, they need to get it done on time"</i> <i>"Good customer service is so important; if something needs to be corrected, they need to be able to resolve the issue"</i>

Source: Big S Customer Survey Data 2018; N=109; Industry participant interviews

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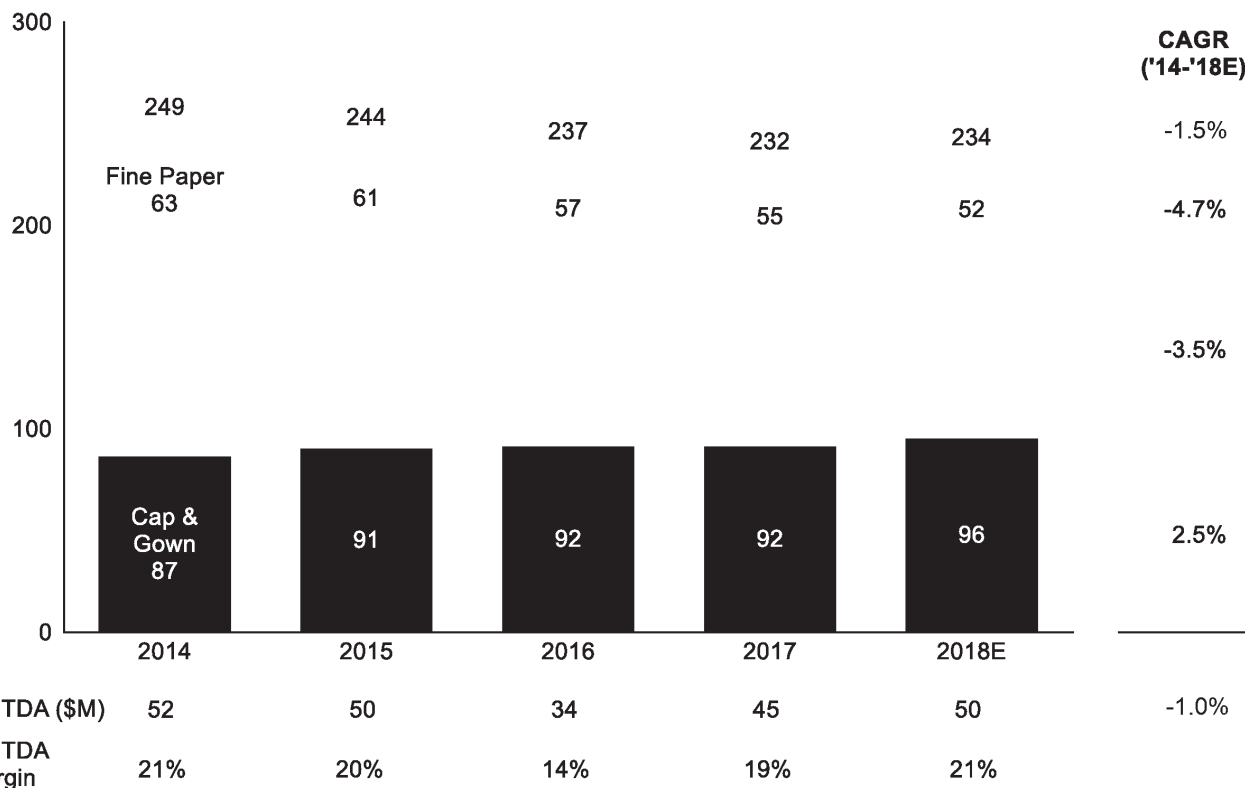
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Revenues lower year-over-year since 2014; modest growth anticipated in 2018 due to strong Cap & Gown performance

OVERALL

/ PRELIMINARY

Herff Jones Scholastic / College net revenues (\$M)



Commentary

Fine Paper - \$52M Rev / \$4M EBITDA

- Steep declines from 2016/2017 operational issues

Jewelry - \$86M Rev / \$16M EBITDA

- Market is shifting towards non-ring products, which Herff does not offer
- College and Champ rings (~20% of business) are growing at 4%-5% p.a.

Cap & Gown - \$96M Rev / \$30M EBITDA

- Growth entirely due to introduction of new custom C&G; remaining 80% of business is declining 2-3% p.a.

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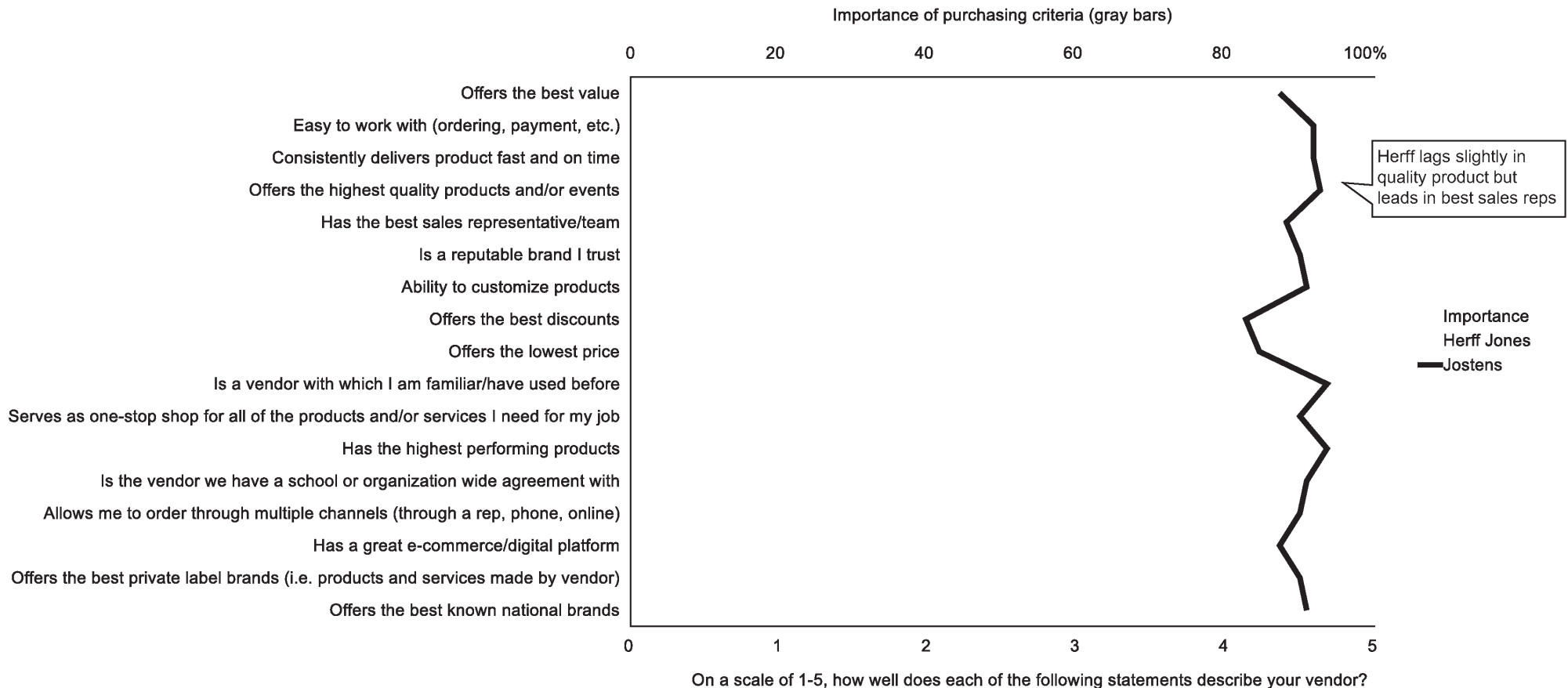
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Herff Jones' Scholastic / College division is well-rated by customers across the most important criteria: value, ease of doing business, and quick/timely delivery of product

OVERALL

/ PRELIMINARY



Source: Big S Customer Survey Data 2018; N=109; Yearbook and Scholastic Survey Data 2018, N = 65

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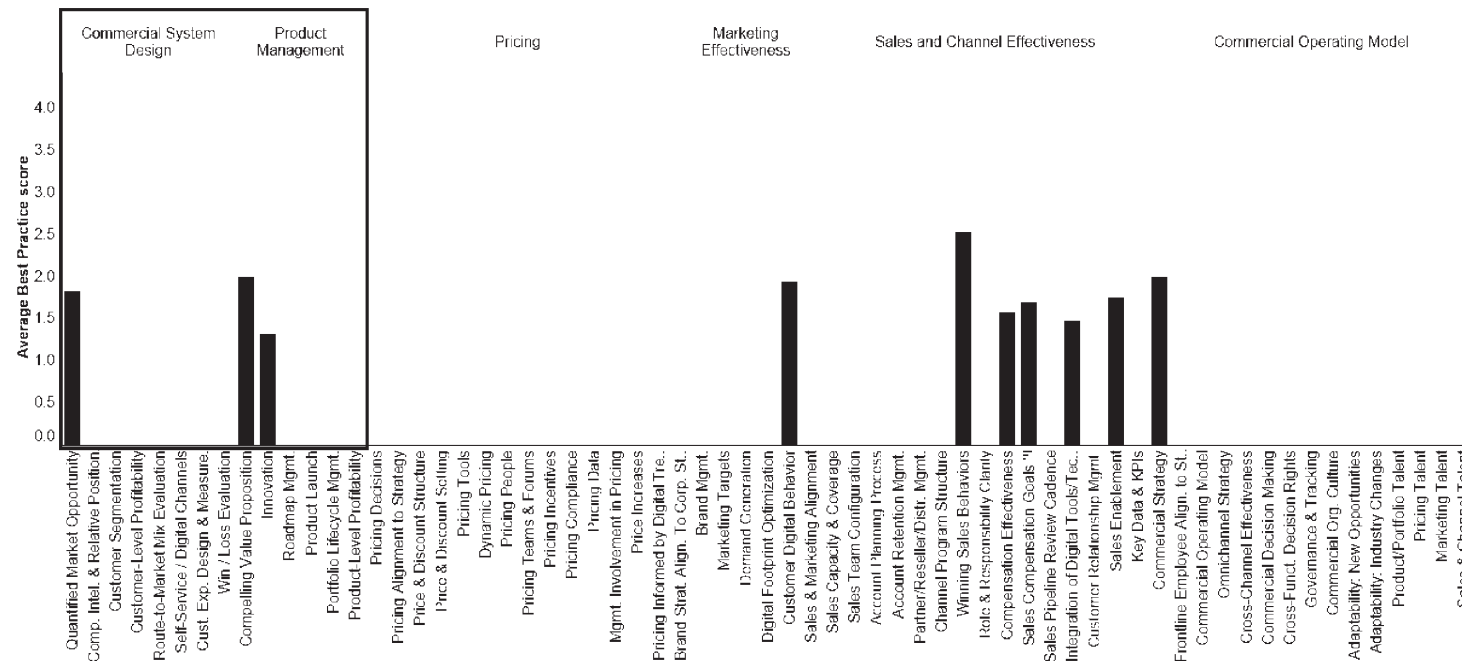
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Commercial Excellence X-Ray suggests that Herff Jones has some larger issues in addition to sales force effectiveness and pricing

HJ Commercial Excellence X-Ray results



Note: Industry: Consumer Products; Commercial Model: Direct, Simple Average ■ Top 10 important best practice






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Themes

- Herff Jones needs a **foundational rethinking of its value proposition to customers**, and what products and services it should offer to create value for the customer
- With a clear value proposition, Herff Jones can then **design a commercial model optimized around its value proposition**

Commercial Excellence: Diagnostic identified a number opportunities at Herff Jones

Major themes	Diagnostic findings
Value proposition <i>(Additional theme not observed across other BUs)</i>	<ul style="list-style-type: none"> Management has low confidence in current value proposition to customer and sales partners (identified via CE X-Ray)
 Coverage model aligned to market opportunities	<ul style="list-style-type: none"> Number of sales partners are declining across Yearbook (-8%) and Scholastic (-6%) Significant room to reduce partner non-selling time, especially among Scholastic and College reps (~40% of time on admin and order support)
 Digital marketing intelligence and lead generation	<ul style="list-style-type: none"> No targets for marketing lead generation and ROI
 Account planning, pipeline management, and target setting	<ul style="list-style-type: none"> Same partner sales are flat or declining <ul style="list-style-type: none"> Yearbook and College: ~2% growth Scholastic: ~2% decline There is very little cross-selling between Scholastic and Yearbook (17/83)
 Pricing enablers and outcomes	<ul style="list-style-type: none"> Multiple pricing opportunities exist; most critical initiatives appear to be in-flight with newly hired HJ pricing team
 Compensation that incentivizes growth & 'value based' margin realization	<ul style="list-style-type: none"> Limited visibility into partner compensation relative to gross profit contributed

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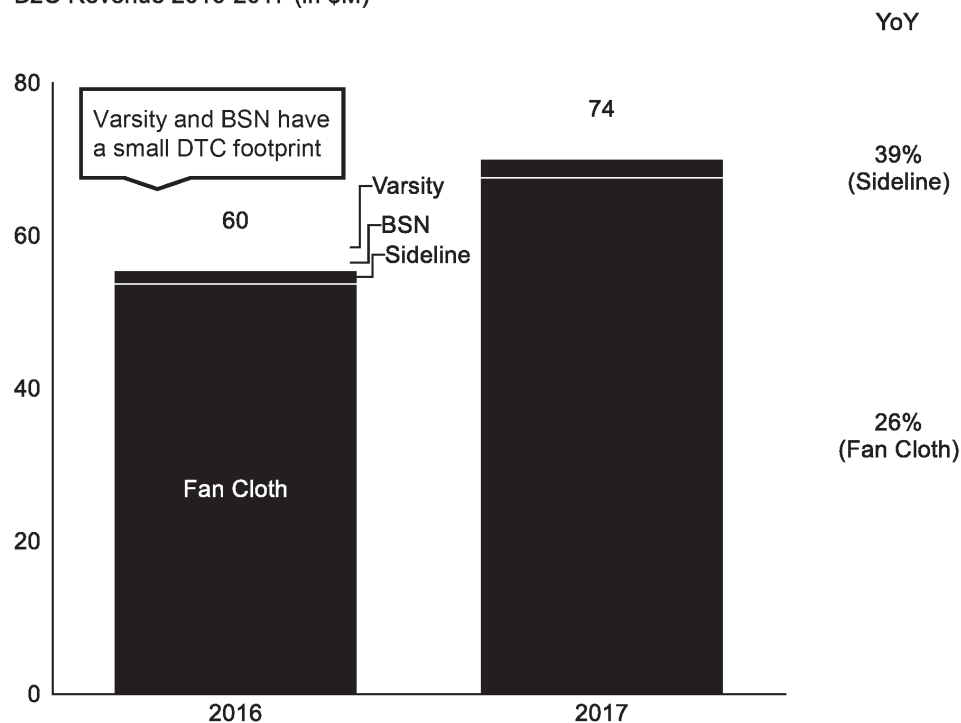
Discussion: Initial prioritization and key strategic choices

Varsity Brands currently leverages numerous channels / platforms to sell DTC

D T C

Direct to consumer revenue

B2C Revenue 2016-2017 (in \$M)



Source: Internal data

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Platform offerings

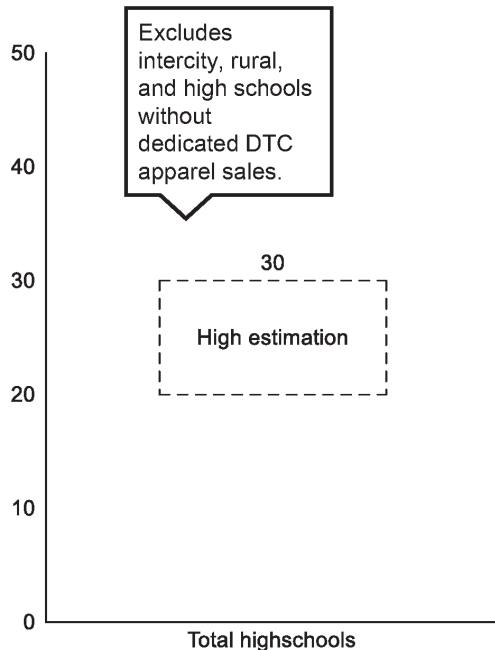
Platform	Description
Fan Cloth	<ul style="list-style-type: none"> Fundraising platform with dedicated online website and physical catalogs open to for a set period of time to raise money for various athletic teams
Sideline	<ul style="list-style-type: none"> Dedicated 24/7 online fanwear store set up by the school through sales reps with a focus on promoting school spirit for students, families, and general fans
Other BSN and Varsity Brands platforms	<ul style="list-style-type: none"> Website where consumers can purchase goods

~20-30% of high schools have a **school-wide spirit merchandise ecommerce program**; market size at this current penetration is ~\$500-525M today

D T C

The online DTC market is ~20-30% penetrated into high schools today

Current high school e-commerce DTC penetration



“average” schools capture between \$50-100/student p.a....

10.5K “penetrated” schools with online spirit store

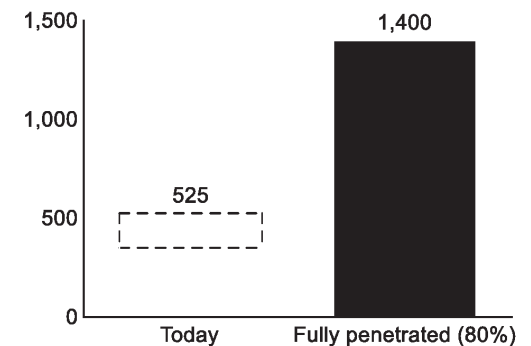
500-1,000 students per school

\$50-100 per student (including parents and relatives)

~\$50,000 per high school

... which suggests a market size of 525M today with room to grow

DTC online market size (\$M)



*“The **nightmare scenario** is holding excess physical inventory, the move to online will be **as fast as ecommerce developed in the 90s**”*

High School Athletic Director

Note: Includes fundraising revenue

Source: Market participant interviews, National Federation of State High School Associations Participation Data, National Center for Education Statistics

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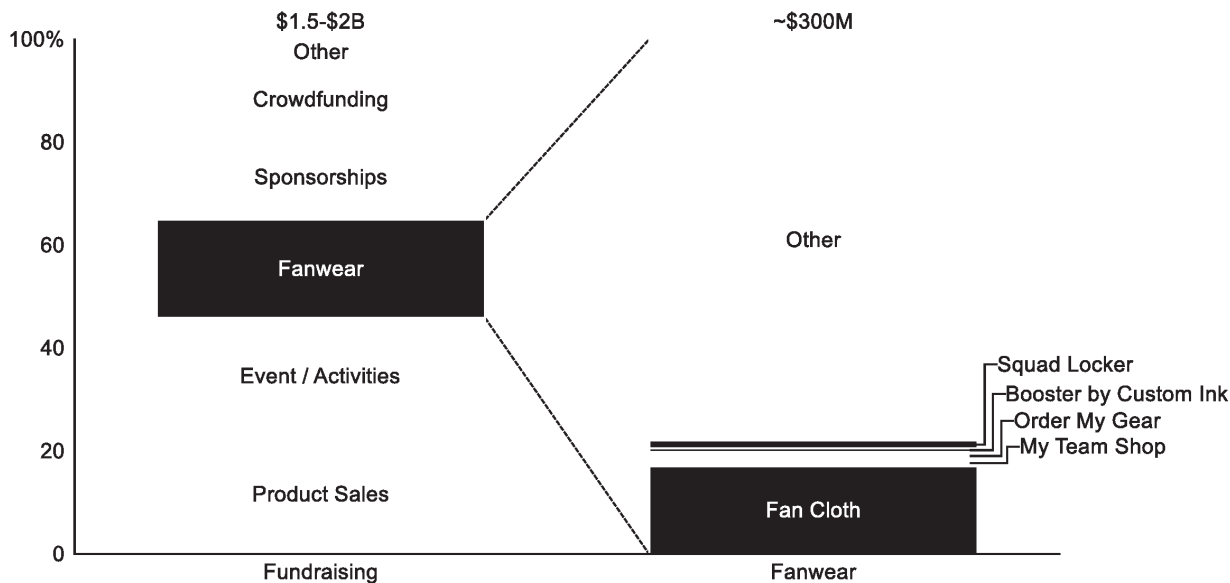
Additionally, **merchandise fundraising** is a ~\$300M portion of a fragmented ~\$1.5B-\$2B fundraising market that primarily channel through coaches/organizations

D T C

/ PRELIMINARY

Athletic and Extracurricular Fundraising Market

Fundraising market (in \$M)



Key trends

- “In recent years, federal funding continued to decline for K-12 education, leaving private funding to fill in the gap”
- There are many types of fundraising completed for athletics and extracurricular activities
- Fanwear is a key fundraising mechanism used by ~50% of schools
- Online giving for K-12 rose ~8% from 2016-2017

Note: Certain company financial data is not available; assume 50% of Order My Gear includes fundraising; Market Size of \$1.5-2B: 35K assumes schools at \$40-60K per school raised (\$43K in Survey); segments based on survey responses of each category as % of total funds raised
Source: 2017 High School Leader Survey, N =100; company information from discussions and website reviews; Blackbaud 2017 annual giving report

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A G E N D A

Business definition

BSN overview

Varsity Spirit overview

Yearbook overview

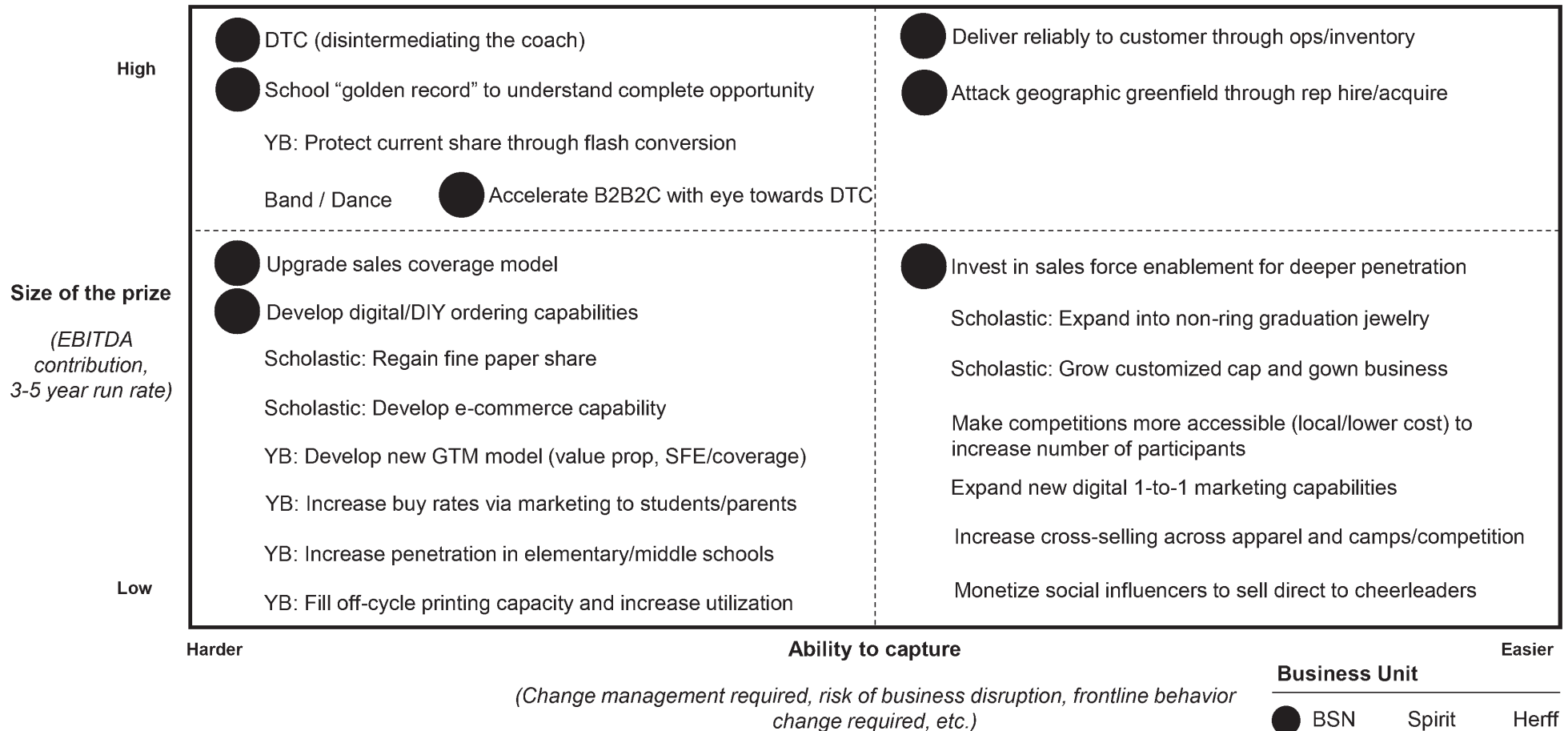
Scholastic / College overview

Direct to consumer

Discussion: Initial prioritization and key strategic choices

Strategy: We have identified potential growth initiatives (“path to victory”) based on the ‘size of the prize’ and time to value

/ FOR DISCUSSION



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Commercial Excellence: Nine high priority initiatives to pursue across the organization to drive towards full potential



- 1** Drive FSP productivity, enabled by:
 - Realign account coverage based on market opportunities
 - Institute robust account planning, pipeline management, and target setting process to deploy capacity to full potential
 - Increase FSP capacity and redeployment by reducing admin/order burden through automation, support staff, and comp. model
- 2** Adjust rep coverage model to accelerate greenfield opportunity capture
 - A** Create field “hunter” reps , supported by lead gen reps, to drive core greenfield
 - B** Add TMs as dedicated inside sales reps to target non-core opportunities
- 3** ‘Start immediately’ pricing opportunities
 - FSP price getting, MTS list price setting and central control, “round up” pricing, and freight as profit center



Implement pricing opportunities and build in attainment of target price into compensation plan

- All-Star: Test increasing mix of rewards dollars towards apparel
- Camps/Competitions: List price optimization
- Apparel: Limit discretionary discounting

Realign Apparel rep coverage and support to improve goal attainment

- Improve territory management supported by frontline management training
- Provide more capacity to sell through automation and support services
- Institute more robust account planning and goal-setting processes

Test dedicated Inside Sales team to capture smaller, greenfield opportunities



HERFF JONES

Key management initiatives:

Execute key sales force transformation initiatives (*in flight*):

- Automated administrative and ordering processes and platforms
- Data visibility
- Sales team reorganization and training
- 17/83 cross-selling initiative

Create a formalized account planning and pipeline management process through Sales Ops (*in flight*)

- Enabled by a strong, sales manager-driven sales cadence and supported by manager capability-building
- Successfully execute ‘Status’ program

Capture pricing opportunities (*in flight*)

Varsity Brands Choices discussion

/ PRELIMINARY

Strategic Choices

- **BSN:** Where and how should BSN continue to attack greenfield and whitespace?
- **BSN:** What are the best supply chain levers to pull to improve our on-time-delivery?
- **BSN:** How should we approach the private label business?
- **Varsity Spirit:** What is the best way to expand the market?
- **Varsity Spirit:** Should VS expand into adjacent markets (and which ones)?
- **HJ Yearbook:** What is the best way to preserve profit and pursue the most attractive growth options?
- **HJ Scholastic:** Which levers and opportunities can create the most value?
- **DTC:** Does VB need to play in the DTC market and what is the best entry strategy?

Implications and enablers of choices

- **Corporate Center:** What corporate functions should sit at the center?
- **Golden Record:** Should a Golden Record be created at the center?
- **Digital:** Which digital initiatives should be prioritized?
- **IMPACT:** [TBD] Where do most of the cross-sell benefits occur?
- Others for discussion

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EXHIBIT 14

In the Matter Of:

Jones vs

Varsity Brands

KEVIN MURPHY

November 04, 2022



1 people would look at market definition.

2 Q. Did you use some version of the
3 hypothetical monopolist test in determining what you
4 believe are the relevant market in this case?

5 A. Yeah. What I looked at is evidence of
6 where would people switch to, which can be thought of as
7 diversion or recapture rates, which is kind of a way
8 that people now approach the hypothetical monopolist
9 test. They sort of ask if you were to raise price and
10 you controlled all the outlets, say, if you're doing
11 geographic market definition within a given distance,
12 would you recapture enough of the lost business to make
13 the price increase profitable.

14 So I think the hypothetical monopolist test
15 is the basis for that kind of recapture-type analysis.
16 And that's one of the things I do in my report.

17 Q. Now, it's -- let me ask you some questions
18 about the product markets in this case.

19 A. Okay.

20 Q. Is it your opinion that All Star
21 competitions are in a distinct market from the
22 Scholastic Cheer competitions?

23 A. Yes, it is.

24 Q. And what is that based on?

25 A. I would say it's based on an analysis of

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1 the products, the consumers, the consumption patterns of
2 those consumers. So it's -- it's based largely on those
3 pieces of the evidence.

4 Q. Anything else?

5 A. I would say those are the main ones.
6 That's what comes to my mind as I sit here today.

7 Q. So would you agree that the hypothetical
8 monopolist test is a proper test, then, for determining
9 whether All Star competitions are in the same or
10 separate markets from Scholastic competitions?

11 A. I'm not sure exactly how one would apply
12 the hypothetical monopolist test in that context. I'm
13 not sure you have the kind of quantitative data you
14 would need to do that vis-a-vis the hypothetical
15 monopolist test methodology. If you had such data and
16 had a methodology for doing it, that would be a proper
17 test.

18 Q. Did you conduct that test in this case with
19 respect to those markets?

20 A. With respect to the fact that those are in
21 separate markets, I did not do the hypothetical
22 monopolist test, because the data we have in this case,
23 and that comparison doesn't lend itself to the
24 hypothetical monopolist test methodology.

25 Q. Is it -- isn't it -- isn't it true that All